

Bill as Introduced

HB 139 - AS INTRODUCED

2021 SESSION

21-0214
05/08

HOUSE BILL **139**

AN ACT relative to the submission of evidence in divorce proceedings.

SPONSORS: Rep. Yokela, Rock. 33; Rep. Wallace, Rock. 12; Rep. Gould, Hills. 7

COMMITTEE: Children and Family Law

ANALYSIS

This bill permits the parties to request a continuance if evidence in a divorce proceeding is not submitted prior to the hearing.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the submission of evidence in divorce proceedings.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 New Section; Annulment, Divorce and Separation; Submission of Evidence. Amend RSA 458
2 by inserting after section 13 the following new section:
3 458:13-a Submission of Evidence. Evidence submitted to the court in a proceeding under this
4 chapter shall be disclosed to the opposing party at least 5 days prior to the date of the hearing. If a
5 party submits evidence less than 5 days prior to the hearing, the opposing party may request a
6 continuance, which shall be granted for a period of not more than 90 days from the originally
7 scheduled hearing date unless the court finds that such evidence is de minimus or that such
8 evidence was not available to the party submitting evidence 5 days prior to the hearing. If the court
9 does not grant a continuance due to the de minimis nature of the evidence submitted, the court shall
10 document the basis for its finding in the court order. This section shall not apply to evidence
11 introduced for purposes of rebuttal or impeachment.
12 2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 28, 2021

HEARINGS

	Monday	05/03/2021	
	(Day)	(Date)	
Judiciary			REMOTE
(Name of Committee)			(Place)
			1:00 p.m.
			(Time)
1:00 p.m.	HB 139	relative to the submission of evidence in divorce proceedings.	
1:15 p.m.	HB 161	relative to the calculation of child support.	
1:30 p.m.	HB 142	relative to causes for divorce.	
1:45 p.m.	HB 495	relative to restraining orders issued in a parenting case.	
2:00 p.m.	HB 494	relative to temporary relief and permanent restraining orders issued in a divorce proceeding.	

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/97554976568>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +13126266799,,97554976568# or +16465588656,,97554976568#
4. Webinar ID: 975 5497 6568
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 139

Rep. Yokela

Rep. Wallace

Rep. Gould

HB 161

Rep. Yokela

Rep. Petrigno

Rep. Malloy

Rep. Abrami

HB 142

Rep. DeSimone

HB 495

Rep. DeSimone

Rep. Baldasaro

Sen. Birdsell

HB 494

Rep. DeSimone

Rep. Harb

Rep. Baldasaro

Sen. Birdsell

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee
Jennifer Horgan 271-7875

HB 139, relative to the submission of evidence in divorce proceedings.

Hearing Date: May 7, 2021

Time Opened: 1:11 p.m.

Time Closed: 1:28 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill permits the parties to request a continuance if evidence in a divorce proceeding is not submitted prior to the hearing.

Sponsors:

Rep. Yokela

Rep. Wallace

Rep. Gould

Who supports the bill: Representative Yokela; Nicholas Thomas

Who opposes the bill: Richard Head, Judicial Branch; Mary Krueger, New Hampshire Legal Assistance; Hannah Smith; Janet Lucas; Pamela Dodge; Amanda Vachon; Adrian Coss; Marissa Chase, NH Association for Justice; Pamela Keilig, New Hampshire Coalition Against Domestic and Sexual Violence

Summary of testimony presented in support:

Representative Yokela

- In divorce proceedings, a lot of people are representing themselves.
- There are guidelines that parties need to disclose their evidence 10 days prior to the hearing, but that requirement may be waived by a judge.
- This bill says that if a judge waives that requirement for evidence submitted and evidence is submitted less than 5 days prior to the hearing then the opposing party may request a continuance, so they have time to prepare for that evidence.
- If the judge says the evidence is de minimis or if the evidence was not available to the party submitting the evidence 5 days prior to the hearing, then that would not be grounds for a continuance.
- This allows for a continuance for up to 90 days.
- If a judge does declare the evidence is de minimis they need to write that down so that it can be challenged if there is a desire to appeal.

- This sets a floor so that if someone hasn't had very much time to look at the evidence, they have time to prepare.
- Senator Gannon asked if there are issues with this currently or are judges lenient with pro se litigants.
 - This is proposed by Representative Itse in prior years and people were reaching out to Representative Itse about this.

Summary of testimony presented in opposition:

Richard Head (Judicial Branch)

- Rule 2.21 deals with the marking of exhibits and exchange of documents prior to a trial, which provides that parties are generally required to bring exhibits 10-14 days prior to a hearing.
- It also provides that parties are required to bring and exchange pretrial statements, financial affidavits, proposed decrees, child support worksheets, etc.
- Further the rule states that following the pretrial conference the court shall not accept modifications to the documents presented at the pretrial conference unless the modified documents have been exchanged within a reasonable time before a final hearing.
- Has some significant concerns about trying to impose a different rule through legislative action, where the Judicial Branch has a current rule that addresses evidentiary rules.
- The Judicial Branch also has a rules committee with legislative members,
- Feels that if there are issues with the rule, the better venue for these types of changes would be through that committee.
- The bill also requires that there be a hearing within 90 days if there is a continuance.
- This creates substantial problems because depending on the court, a person may be looking at more than 90 days in terms of being able to get a trial.
- Some courts are scheduling the family docket into next year.
- Depending on the length and nature of the trial, courts may have bump a priorly scheduled case to accommodate that trial on the docket.
- There are instances where evidence gets presented after a pretrial conference, and it is not viewed well by the court unless it is relatively de minimis or not a surprise to the parties which would not require a continuance.
- Senator Whitley asked if this could create confusion because of the inconsistency with the evidentiary requirements.
 - It could create a huge amount of confusion.
- Senator Gannon asked if it is like a balancing test the closer it gets to the trial for the judge.
 - Once you get past the deadline where parties were supposed to file, getting closer to the trial could be more problematic. The court expects the parties to present on the day they are supposed to. If there are instances where evidence doesn't get recorded or is not properly identified on a pretrial statement, then after the final pretrial conference there is an

amendment filed, the court then has to balance what the issues are, if it is a surprise to the parties, and do the parties now need more time.

- Senator French asked if the courts could have difficulties rescheduling within 90 days.
 - Yes. It depends on the nature of the trial. If a court needs to put in a five-day trial in the next 90 days, it is going to result in bumping another case. Some courts are currently scheduling family cases into next year.
- Senator French asked if because some cases are currently being delayed until next year, could this bill be used as a delaying tactic by one party or another.
 - Absolutely. If a person has an absolute right to a continuance and delay supports their side, this could be used to the party's advantage of gaining a delay.

Mary Krueger (NH Legal Assistance)

- Echoes Mr. Head's testimony.
- Under the current court rules there is an option for pretrial where parties would be required to submit the exhibits ahead of time.
- If the court doesn't have a pretrial, there is another rule that provides that those exhibits ought to be submitted 30 days before the trial.
- If someone does not follow the rules the court can exclude that evidence or witness.
- That is a real incentive for people to comply with the rules.
- Concerned that this would provide an individual with the opportunity to thwart the rules in order to delay.
- In representing victims of domestic abuse, the court can often be the last place where corrosive control can be exerted, and this bill could be inadvertently used to delay the process where sometimes finality is critical.
- Senator Gannon asked if the court tries to accommodate pro se litigants.
 - Generally, thinks the courts are going to be understanding of pro se litigants who do not understand the process. Along the way judges tend to give a lot of reminders or send out the expectations to make sure people understand the rules. Thinks the family division does quite a bit with case managers to help pro se litigants. By the time a person gets to trial, the court is going to use good judgment regarding what it is going to exclude. If all that is needed is a 15 minute break to review a single document then that is one situation, while a stack of financial documents that have been requested repeatedly may throw a wrench in the works.

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB139 on 2021-05-03

Support: 2 Oppose: 9 Neutral: 0 Total to Testify: 3

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Head, Richard	rhead@courts.state.nh.us	603-716-8235	State Agency Staff	Myself	Oppose	Yes	5/3/2021 7:56 AM
Krueger, Mary	mkrueger@nhla.org	603-206-2239	A Member of the Public	New Hampshire Legal Assistance	Oppose	Yes	5/3/2021 10:54 AM
Yokela, Josh	josh.yokela@leg.state.nh.us	603-722-0501	An Elected Official	Rockingham 33	Support	Yes	5/3/2021 11:10 AM
Smith, Hannah	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/6/2021 8:52 PM
Lucas, Janet	janluca1953@gmail.com	16037267614	A Member of the Public	Myself	Oppose	No	5/3/2021 9:05 AM
Dodge, Pamela	pdodge8611@gmail.com	603.608.6320	A Member of the Public	Myself	Oppose	No	5/3/2021 8:37 AM
Vachon, Amanda	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/3/2021 9:32 AM
Coss, Adrian	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/2/2021 11:29 AM
Chase, Marissa	mchase@nhaj.org	603.854.9330	A Lobbyist	NH Association for Justice	Oppose	No	5/2/2021 4:12 PM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	Not Given	A Member of the Public	Myself	Support	No	5/3/2021 12:58 AM
Keilig, Pamela	pkeilig@nhcadsv.org	603-219-8474	A Lobbyist	New Hampshire Coalition Against Domestic and Sexual Violence	Oppose	No	5/2/2021 8:34 PM

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HBI 39

Hearing date: _____

Executive Session date: _____

Motion of: ITL Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Whitley

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Tuesday, May 25, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 139**

AN ACT

relative to the submission of evidence in divorce proceedings.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 5-0

Senator Rebecca Whitley
For the Committee

This bill would permit the parties to request a continuance if evidence in a divorce proceeding is not submitted prior to the hearing. The Judicial Branch already has rules addressing discovery deadlines and this bill would create inconsistency and confusion by imposing different requirements.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 139, relative to the submission of evidence in divorce proceedings.

Inexpedient to Legislate, Vote 5-0.

Senator Rebecca Whitley for the committee.

This bill would permit the parties to request a continuance if evidence in a divorce proceeding is not submitted prior to the hearing. The Judicial Branch already has rules addressing discovery deadlines and this bill would create inconsistency and confusion by imposing different requirements.

General Court of New Hampshire - Bill Status System

Docket of HB139

Docket Abbreviations

Bill Title: relative to the submission of evidence in divorce proceedings.*Official Docket of HB139.:*

Date	Body	Description
1/4/2021	H	Introduced (in recess of) 01/06/2021 and referred to Children and Family Law HJ 2 P. 36
3/3/2021	H	Public Hearing: 03/03/2021 10:00 am Members of the public may attend using the following links: To join the webinar: https://www.zoom.us/j/99169761614 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
3/11/2021	H	Executive Session: 03/11/2021 09:30 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/91927749754
3/17/2021	H	Majority Committee Report: Ought to Pass (Vote 8-7; RC) HC 18 P. 32
3/17/2021	H	Minority Committee Report: Inexpedient to Legislate
4/7/2021	H	Ought to Pass: MA RC 193-179 04/07/2021 HJ 5 P. 130
4/13/2021	S	Introduced 04/08/2021 and Referred to Judiciary; SJ 12
4/28/2021	S	Remote Hearing: 05/03/2021, 01:00 pm; Links to join the hearing can be found in the Senate Calendar; SC 22
5/25/2021	S	Committee Report: Inexpedient to Legislate; Vote 5-0; CC; 05/27/2021; SC 25A
5/27/2021	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; 05/27/2021; SJ 17

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB139

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Horgen
Committee Aide

8/12/21
Date

Senate Clerk's Office JK