

Bill as Introduced

HB 270-FN - AS INTRODUCED

2021 SESSION

21-0075
04/05

HOUSE BILL

270-FN

AN ACT

relative to post-conviction DNA testing.

SPONSORS:

Rep. Conley, Straf. 13; Rep. Schapiro, Ches. 16; Rep. Moran, Hills. 34; Rep. Cushing, Rock. 21

COMMITTEE:

Criminal Justice and Public Safety

ANALYSIS

This bill amends the statute governing post-conviction DNA testing procedures.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 post-conviction DNA testing.

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

1 1 Post-Conviction DNA Testing of Biological Material. Amend RSA 651-D:2 to read as follows:
2 651-D:2 Post-Conviction DNA Testing of Biological Material.

3 I. A person in custody, *on probation or parole, or whose liberty is otherwise*
4 *restrained as a result of a conviction or adjudication as a delinquent* pursuant to the
5 judgment of the court may, *notwithstanding RSA 526:4*, at any time after conviction or
6 adjudication as a delinquent, petition the *superior* court *in the county of conviction* for forensic
7 DNA testing of any biological material. The petition shall, under penalty of perjury:

8 (a) Explain why the identity of the petitioner was or should have been a significant issue
9 during court proceedings notwithstanding the fact that the petitioner may have pled guilty or nolo
10 contendere, or made or is alleged to have made an incriminating statement or admission as to
11 identity.

12 (b) Explain why, in light of all the circumstances, the requested DNA testing will
13 exonerate the petitioner and demonstrate his or her innocence by proving that the petitioner has
14 been misidentified as the perpetrator of, or accomplice to, the crime for which the petitioner was
15 convicted.

16 (c) Make every reasonable attempt to identify ~~[both]~~ the evidence that should be tested
17 ~~[and the specific type of DNA testing which is sought].~~

18 (d) Explain why the evidence sought to be tested by the petitioner was not previously
19 subjected to DNA testing, or explain how the evidence can be subjected to retesting with different
20 DNA techniques that provide a reasonable probability of reliable and probative results.

21 ***I-a. If the superior court determines that an indigent petitioner has met the***
22 ***requirements of paragraph I, it shall appoint counsel to represent such petitioner in any***
23 ***further proceedings under this section.***

24 II. The court shall notify the office of the attorney general, or the county attorney who
25 prosecuted the case, of a petition made under this section and shall afford an opportunity to respond.
26 Upon receiving notice of a petition made under this section, the attorney general, or county attorney
27 who prosecuted the case, shall take such steps as are necessary to ensure that any remaining
28 biological material obtained in connection with the case or investigation is preserved pending the
29 completion of proceedings under this section *and shall inform the petitioner regarding the*
30 *location and condition of evidence in their possession that was obtained in relation to the*
31 *underlying case, regardless of whether it was introduced at trial. Items discoverable at*

1 *trial under the New Hampshire rules of criminal procedure shall be made available to the*
2 *petitioner.*

3 III. *After a hearing*, the court ~~[may]~~ *shall* order DNA testing pursuant to an application
4 made under this section upon finding that the petitioner has established each of the following factors
5 by ~~[clear and convincing]~~ *a preponderance of the evidence*:

6 (a) The evidence to be tested was secured in relation to the investigation or prosecution
7 that resulted in the petitioner's conviction or sentence, and is available and in a condition that would
8 permit the DNA testing that is requested in the motion.

9 (b) The evidence to be tested has been subject to a chain of custody sufficient to establish
10 it has not been substituted, tampered with, replaced, or altered in any material aspect.

11 (c) The evidence sought to be tested is material to the issue of the petitioner's identity as
12 the perpetrator of, or accomplice to, the crime.

13 (d) DNA results of the evidence sought to be tested would be material to the issue of the
14 petitioner's identity as the perpetrator of, or accomplice to, the crime that resulted in his or her
15 conviction or sentence.

16 (e) If the requested DNA testing produces exculpatory results, the testing will constitute
17 new, noncumulative material evidence that ~~[will exonerate the petitioner by establishing that he or~~
18 ~~she was misidentified as the perpetrator or accomplice to the crime]~~ *there is a reasonable*
19 *probability the petitioner would not have been convicted.*

20 (f) The evidence sought to be tested was not previously tested using DNA technology or
21 the ~~[technology requested was not available at the time of trial]~~ *type of testing sought is capable*
22 *of producing new or more informative results.*

23 (g) If DNA or other forensic testing previously was done in connection with the case, the
24 requested DNA test would provide results that are *new or* ~~[significantly]~~ more ~~[discriminating]~~
25 *informative* and probative on a material issue of identity, and would have a reasonable probability
26 of contradicting prior test results.

27 (h) The testing requested employs a method generally accepted within the relevant
28 scientific community.

29 ~~[(i) The motion is timely and not unreasonably delayed.]~~

30 IV. If the court grants the motion for DNA testing, the court's order shall:

31 (a) Identify the specific evidence to be tested and the DNA technology to be used.

32 (b) If the court ordered different testing than requested by the petitioner, the court shall
33 explain why the different test was ordered.

34 (c) Designate the New Hampshire state police forensic laboratory to conduct the test.
35 However, the court, upon a showing of good cause, may order testing by another laboratory or agency
36 ~~[accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board~~
37 ~~(ASCLD/LAB) or the National Forensic Science Training Center]~~ *that conforms to the current*

1 *version of ISO/IEC 17025 requirements, the appropriate quality assurance standards*
2 *required by the Federal Bureau of Investigation, and to forensic-specific requirements, and*
3 *accredited by an organization that is a signatory to the International Laboratory*
4 *Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories, if*
5 *requested by the petitioner. The laboratory shall give equal access to its personnel, opinions,*
6 *conclusions, reports, and other documentation to the prosecuting attorney and the*
7 *petitioner. Consumptive testing shall not occur except upon written permission by both the*
8 *prosecutor and petitioner or by a specific order of the court.*

9 (d) [Repealed.]

10 V. The cost of DNA testing ordered under this section shall be paid by the petitioner, or by
11 the state, if the petitioner is indigent as determined by the court. ~~[The court may appoint counsel for~~
12 ~~an indigent petitioner under this section.]~~

13 VI.(a) If the results of DNA testing conducted under this section are unfavorable to the
14 petitioner, the court shall dismiss the application and in cases where the petitioner was convicted of
15 a sexual offense, the court shall forward the test results to the New Hampshire state prison, sex
16 offender program.

17 (b) In addition to any other substantive or procedural remedies provided by applicable
18 law, if the results of DNA testing conducted under this section are favorable to the petitioner, *and*
19 *notwithstanding RSA 526:4*, the court shall order a hearing and shall enter any order that serves
20 the interests of justice, including an order vacating and setting aside the judgment, discharging the
21 petitioner if the petitioner is in custody, resentencing the petitioner, or granting a new trial.

22 VII. Nothing in this chapter shall be construed to limit the circumstances under which a
23 person may obtain DNA testing or other post-conviction relief under any other provision of state or
24 federal law.

25 2 Effective Date. This act shall take effect 60 days after its passage.

**HB 270-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to post-conviction DNA testing.

FISCAL IMPACT: State County Local None

| STATE: | Estimated Increase / (Decrease) | | | |
|------------------------|---|------------------------------------|----------------------------------|--------------------------------|
| | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
| Appropriation | \$0 | \$0 | \$0 | \$0 |
| Revenue | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |
| Funding Source: | <input checked="" type="checkbox"/> General | <input type="checkbox"/> Education | <input type="checkbox"/> Highway | <input type="checkbox"/> Other |

METHODOLOGY:

This bill amends the statute governing post-conviction DNA testing procedures. The Judicial Council indicates post-conviction DNA testing currently applies to individuals who are in custody. The bill expands availability of DNA testing to individuals on probation, parole, or anyone whose liberty is otherwise restrained. The bill would guarantee the right to court appointed counsel if the superior court grants a petition for forensic DNA testing of biological material and the petitioner is indigent. The Council is unable to predict either the number of additional cases or the associated cost. However, based on information from the Department of Safety, only a small number of the annual DNA test performed are for post-conviction matters. While the cost is indeterminable, the Council anticipates an insignificant increase in expenditures.

The Department of Safety indicates the fiscal impact of the bill on state expenditures is indeterminable and will depend on the number of petitions that will meet the criteria in proposed RSA 651-D:2, III. Frequently, DNA testing cannot be performed by the State Police Forensic Laboratory and must be sent to a private laboratory at an additional cost to the requestor or the State.

The Judicial Branch makes the following assumptions concerning the fiscal impact of this bill:

- The bill broadens the eligibility requirements to petition the Superior Court for authorization to proceed with DNA testing of evidence related to a conviction or adjudication.
- The bill eliminates any potential argument that there are time limits related to petitions for authorization to proceed with DNA testing of evidence related to a conviction or adjudication.

- The bill changes the appointment-of-counsel terms of the law from discretionary to mandatory if certain basic conditions are met by a petitioner. This is likely to result in the involvement of more appointed counsel in these proceedings and will likely increase the length of time the proceedings take to get to a final disposition and will likely to increase the in-court time for these proceedings.
- Because the bill changes the standard of review for petitions for post-conviction DNA testing in two important ways that are more favorable to the petitioner, it is reasonable to assume that anyone who has filed a previous petition for post-conviction DNA testing and who has had their petition denied by the court would file a new petition under the new law.
- The bill would change the procedure in the courts to require the court to hold a hearing on a petition. Under existing law the decision as to whether a hearing will be held is left to the discretion of the trial court. This will increase the number of hearings held in connection with petitions for post-conviction DNA testing.

The Judicial Branch does not have available statistics on the annual number motions for post-conviction DNA testing. Without manually going through each file, the Branch cannot determine how many motions for post-conviction DNA testing are filed each year. However anecdotally, court staff indicate that these petitions are exceedingly rare, likely because the identity of an offender is not regularly the issue in a sexual assault case in New Hampshire. However, the bill would make these petitions more likely to occur, lowers the standard of proof required to prevail, and requires that the court appoint counsel and hold in-court proceedings to address the petitions. The Branch indicates these petitions are rare, the bill is likely to increase the number petitions filed and a few more hearings would not be enough to have a fiscal impact. The Branch assumes this increase in workload would likely be adsorbed by the Judicial Branch within existing resources.

There would be no impact on state, county or local revenue or county and local expenditures.

It is assumed the fiscal impact of this bill will not occur until FY 2022.

AGENCIES CONTACTED:

Judicial Council, Department of Safety and Judicial Branch

CHAPTER 49
HB 270-FN - FINAL VERSION

9Apr2021... 1285EBA

2021 SESSION

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HOUSE BILL **270-FN**

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- Page 3 -

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5 *is accredited by an organization that is a signatory to the International Laboratory*
6 *Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories, if*
7 *requested by the petitioner. The laboratory shall give equal access to its personnel, opinions,*
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9 *petitioner. Consumptive testing shall not occur except upon written permission by both the*
10 *prosecutor and petitioner or by a specific order of the court.*

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13 the state, if the petitioner is indigent as determined by the court. ~~[The court may appoint counsel for~~
14 ~~an indigent petitioner under this section.]~~

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16 petitioner, the court shall dismiss the application and in cases where the petitioner was convicted of
17 a sexual offense, the court shall forward the test results to the New Hampshire state prison, sex
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19 (b) In addition to any other substantive or procedural remedies provided by applicable
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21 *notwithstanding RSA 526:4*, the court shall order a hearing and shall enter any order that serves
22 the interests of justice, including an order vacating and setting aside the judgment, discharging the
23 petitioner if the petitioner is in custody, resentencing the petitioner, or granting a new trial.

24 VII. Nothing in this chapter shall be construed to limit the circumstances under which a
25 person may obtain DNA testing or other post-conviction relief under any other provision of state or
26 federal law.

27 49:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 25, 2021
Effective Date: July 24, 2021

Committee Minutes

**AMENDED
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 7, 2021

HEARINGS

Tuesday

04/13/2021

| Judiciary (Name of Committee) | (Day) | (Date) | REMOTE 000 (Place) | 1:00 p.m. (Time) |
|----------------------------------|------------------------|--|-----------------------|---------------------|
| 1:00 p.m. | HB 108-FN-LOCAL | relative to minutes and decisions in nonpublic sessions under the right-to-know law. | | |
| 1:15 p.m. | HB 178-FN | relative to the parole of prisoners and the procedures of the adult parole board. | | |
| 1:30 p.m. | HB 239-FN | relative to prosecutions for certain assaults against minors. | | |
| 1:45 p.m. | HB 270-FN | relative to post-conviction DNA testing. | | |
| 2:00 p.m. | HB 296-FN | establishing the crime of unsolicited disclosure of an intimate image. | | |
| 2:15 p.m. | HB 615-FN | reducing the penalty for certain first offense drug possession charges. | | |

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/91749966342>
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: +13017158592,,91749966342# or +13126266799,,91749966342#
4. Webinar ID: [917 4996 6342](https://www.zoom.us/j/91749966342)
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 108-FN-LOCAL

Rep. Ulery

Rep. Spillane

Rep. McGuire

Rep. T. Lekas

HB 178-FN

Rep. Abbas

Sen. Daniels

HB 239-FN

Rep. Abramson

Rep. Ankarberg

HB 270-FN

Rep. Conley

Rep. Schapiro

Rep. Moran

Rep. Cushing

HB 296-FN

Rep. Nutting-Wong

Rep. Frost

HB 615-FN

Rep. Seaworth

Rep. Verville

Rep. Potucek

Rep. Conley

Rep. Roy

Sen. Reagan

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 270-FN, relative to post-conviction DNA testing.

Hearing Date: April 13, 2021

Time Opened: 1:45 p.m.

Time Closed: 2:02 p.m.

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

Members of the Committee Absent : None

Bill Analysis: This bill amends the statute governing post-conviction DNA testing procedures.

Sponsors:

Rep. Conley

Rep. Schapiro

Rep. Moran

Rep. Cushing

Who supports the bill: 78 people signed up in support of the bill. Full sign in sheet available upon request.

Who opposes the bill: 2 people signed up in opposition of the bill. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Conley

- This bill amends the statute governing post-conviction DNA testing procedures.
- This bill clarifies the existing statute for how someone would petition for this type of redress, including,
 - Which court they would make the application,
 - A provision to assign an attorney if they meet existing requirements,
 - Clarifies the process for testing the biological material,
 - What labs will be used,
 - How the results will be shared,
 - And modifies the standard a person must demonstrate for a judge to authorize the testing from clear and convincing to a preponderance of the evidence.
- This also lets a person on parole or someone who has completed their sentence to pursue this as well.

- Very few cases have DNA or biological evidence, and they are generally cases of sexual assault or murder.
- The number of cases where it would potentially exonerate someone is even smaller.
- NH has never had a DNA exoneration.
- This bill gives someone who is wrongfully convicted a clear path to seek their freedom, but with existing safeguards in place to protect the state against frivolous claims.
- The fiscal impact for this, given how few petitions there are likely to be, would be able to be handed within existing workloads and budgets.
- Senator Kahn asked if there were other groups that worked on this.
 - Much of the work on this was done by Rep Cushing. The Innocence Project and a few others did assist on it as well.

Cynthia Mousseau (New England Innocence Project)

- The potential impact for this bill would be so great for those who have been wrongfully convicted.
- The stats show that NH is not reaching the people being wrongfully convicted.
- The current statute is so limited that it is not allowing access to testing for individuals who should have access to it.
- Science changes so quickly, we want to make sure we have the best and more accurate science in our court rooms.
- Worked as a public defender in NH and knows there are innocent people in prison here.
- The practical reality is that this does not apply to 90% of cases in NH, as they do not include biological evidence.
- Senator Whitley asked about the national data saying what we should see in NH.
 - Does not know the actual numbers across the state, but the important thing to recognize is that zero DNA exonerations is a number that is unrealistic.

Elizabeth Powers (Innocence Project) (provided written testimony)

- There have been 375 exonerations based on DNA nationally.
- This bill would clarify and modernize the process for DNA testing for post-conviction.
- This would not change the standard by which a conviction can be overturned.
- It simply creates a clearer path for obtaining testing.
- The true perpetrators of these crimes were subsequently detected in 44% of exoneration cases.
- Those 165 known perpetrators went on to commit significant violent crimes including, 36 murders, 83 rapes, and 35 other violent crimes, while an innocent person sat in jail.

Buzz Scherr (provided written testimony)

- Has been handling DNA cases for over 30 years and has tried to use the current statute.
- It took three years to work through the existing statute given its messiness, vagueness in relationship to other statutes, and a variety of time limits that apply.
- This bill improves the statute in a very meaningful way in terms of unnecessary roadblocks.
- There are over 1,000 wrongful convictions in the US.
- Has done a survey of criminal defense lawyers in the state to ask how many have handled a case under the current post conviction DNA statute and none have.
- It is hard to get counsel in jail and it is hard to understand how to meet the burdens in the current statute.

Summary of testimony presented in opposition:

None

Date Hearing Report completed: April 14, 2021

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB270 on 2021-04-13

Support: 78 Oppose: 2 Neutral: 0 Total to Testify: 4

| <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> |
|----------------------------|-----------------------------------|--------------|------------------------|--|-----------------|-------------------|--------------------|
| Scherr, Albert | albert.scherr@law.unh.edu | 603-828-6515 | A Member of the Public | Myself | Support | Yes | 4/12/2021 5:52 PM |
| Mousseau, Cynthia | cmousseau@newenglandinnocence.org | 518.593.2219 | A Member of the Public | New England Innocence Project | Support | Yes | 4/9/2021 4:52 PM |
| Conley, Casey | caseymconley@gmail.com | 207.232.1992 | An Elected Official | Myself/prime sponsor | Support | Yes | 4/13/2021 8:08 AM |
| Powers, Elizabeth | epowers@innocenceproject.org | 314.221.2364 | A Member of the Public | Innocence Project | Support | Yes | 4/12/2021 1:09 PM |
| Russell, Scott | srussell@nhpd.org | Not Given | A Member of the Public | Myself | Oppose | No | 4/12/2021 1:14 PM |
| Bruce, Susan | susanb.red@mac.com | 603.730.7078 | A Member of the Public | Myself | Support | No | 4/10/2021 10:26 AM |
| Lynch, Chrisinda | cmmelynych@comcast.net | 603.225.5614 | A Member of the Public | Myself | Support | No | 4/10/2021 2:05 PM |
| Thomas, Nicholas | nicholas.w.thomas@uconn.edu | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 3:50 AM |
| Paschell, Susan | spaschell@dupontgroup.com | 603.496.6760 | A Lobbyist | The Innocence Project | Support | No | 4/8/2021 3:27 PM |
| Blair, David | orionblair@gmail.com | 603.828.6804 | A Member of the Public | Myself | Support | No | 4/11/2021 10:45 AM |
| Bates, David | dbates3@yahoo.com | 603.748.2668 | A Member of the Public | Myself | Support | No | 4/11/2021 1:40 PM |
| Fenner-Lukaitis, Elizabeth | glukaitis@mcttelecom.com | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 3:00 PM |
| Spielman, Kathy | jspielman@comcast.net | 603.397.7879 | A Member of the Public | Myself | Support | No | 4/13/2021 8:19 AM |
| McLaughlin, Barbara | brbmclaughlin42@gmail.com | 760.458.9668 | A Member of the Public | Myself | Support | No | 4/13/2021 8:30 AM |
| Koch, Helmut | helmut.koch.2001@gmail.com | 603.491.3306 | A Member of the Public | Myself | Support | No | 4/13/2021 8:39 AM |
| Hamer, Heidi | Not Given | Not Given | An Elected Official | Myself | Support | No | 4/13/2021 8:59 AM |
| Bouchard, Donald | donaldjbouchard@gmail.com | 603.622.0388 | An Elected Official | Myself | Support | No | 4/13/2021 9:19 AM |
| Watson, Clyde | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 9:30 AM |
| Koch, Laurie | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 9:40 AM |
| Chase, Wendy | Wendy.Chase@leg.state.nh.us | 603-319-7259 | An Elected Official | Myself | Support | No | 4/13/2021 9:56 AM |
| Laker-Phelps, Gail | lpsart@tds.net | 603.798.5394 | A Member of the Public | Myself | Support | No | 4/13/2021 10:15 AM |
| Hamblet, Joan | joan.hamblet@leg.state.nh.us | 603.205.4925 | A Member of the Public | Myself | Support | No | 4/13/2021 12:24 PM |
| Keilig, Pamela | pkeilig@nhcadsv.org | 603-219-8474 | A Lobbyist | New Hampshire Coalition Against Domestic and Sexual Violence | Oppose | No | 4/13/2021 1:02 PM |
| Schapiro, Joe | joe.schapiro@leg.state.nh.us | 603.852.5039 | An Elected Official | Cheshire 16, Keene | Support | No | 4/13/2021 1:10 PM |
| Aronson, Laura | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 9:17 PM |
| Chaffee, Devon | Not Given | Not Given | A Lobbyist | ACLU of NH | Support | No | 4/13/2021 4:10 PM |

| | | | | | | | |
|-----------------------|----------------------------|--------------|------------------------|--------|---------|----|--------------------|
| Cranage, Amy | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 4:46 PM |
| Dontonville, Roger | rdontonville@gmail.com | 603.632.7719 | An Elected Official | Myself | Support | No | 4/14/2021 9:06 AM |
| Rettew, Annie | abrettew@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 6:03 PM |
| King, Walter | genedocwk@comcast.net | 603.978.9775 | A Member of the Public | Myself | Support | No | 4/13/2021 10:01 PM |
| Kruithof, Leslie | lesliekruithof@gmail.com | 201.725.4641 | A Member of the Public | Myself | Support | No | 4/11/2021 4:06 PM |
| Hennessey, Martha | martha.hennessey@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 6:08 PM |
| Hinkel, Robert | r.hinkel@gmail.com | 413.478.8701 | A Member of the Public | Myself | Support | No | 4/12/2021 12:05 PM |
| Hatcher, Phil | phil.hatcher@gmail.com | 603.988.8034 | A Member of the Public | Myself | Support | No | 4/11/2021 11:37 AM |
| Orkin, Susan | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 11:58 AM |
| Bushueff, Catherine | agawamdesigns@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 5:06 PM |
| Letellier, Kathleen | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 7:20 PM |
| almeida, zulmira | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 7:51 PM |
| Barretto, Tim | timbarretto@comcast.net | 603.749.0037 | A Member of the Public | Myself | Support | No | 4/12/2021 6:17 AM |
| Michelson, Barbara | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/11/2021 10:25 AM |
| Feder, Marsha | marshafeder@gmail.com | 603.860.8743 | A Member of the Public | Myself | Support | No | 4/11/2021 11:14 AM |
| Lucas, Janet | janluca1953@gmail.com | 16037267614 | A Member of the Public | Myself | Support | No | 4/12/2021 7:38 AM |
| Chait, George | george.chait@gmail.com | 603.848.3236 | A Member of the Public | Myself | Support | No | 4/12/2021 1:48 PM |
| Phillips, Margery | Margeryphillips@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 2:03 PM |
| Clancy, Michelle | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 8:52 AM |
| QUISUMBING-KING, Cora | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 10:53 AM |
| Schechter, Ari | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 11:11 AM |
| Moran, Karen | karenmoran@tds.net | 603.746.2017 | A Member of the Public | Myself | Support | No | 4/12/2021 6:40 PM |
| Kaufman, Amy | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 7:15 PM |
| Reed, Barbara D. | BDRreed74@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 9:00 PM |
| Hansen, Sarah | sarahsarahhansen@gmail.com | 503.803.4964 | A Member of the Public | Myself | Support | No | 4/12/2021 4:19 PM |
| Pexton, Olivia | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 5:12 PM |
| Brennan, Nancy | burningnan14@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 7:02 PM |
| Hayes, Randy | rcompostr@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 8:00 PM |
| Dewey, Karen | pkdewey@comcast.net | 603.504.2813 | A Member of the Public | Myself | Support | No | 4/12/2021 8:14 PM |
| Torpey, Jeanne | jtorp51@comcast.net | Concord | A Member of the Public | Myself | Support | No | 4/12/2021 8:24 PM |
| Richman, Susan | susan7richman@gmail.com | 603.868.2758 | A Member of the Public | Myself | Support | No | 4/12/2021 8:27 PM |
| Schissel, Mary | schissell@comcast.net | 603.863.7323 | A Member of the Public | Myself | Support | No | 4/12/2021 8:33 PM |
| Mennella, Alexandra | amennella1@protonmail.com | 16466109858 | A Member of the Public | Myself | Support | No | 4/12/2021 9:20 PM |
| Edelson, Rachel | redelson@hotmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 9:28 PM |
| Garland, Ann | annhgarland@gmail.com | 603.678.8143 | A Member of the Public | Myself | Support | No | 4/12/2021 9:36 PM |
| Falk, Cheri | Falk.cj@gmail.com | 603.654.2777 | A Member of the Public | Myself | Support | No | 4/12/2021 10:00 PM |
| Istel, Claudia | claudia@sover.net | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 11:36 PM |

| | | | | | | | |
|-----------------------|-------------------------------|--------------|------------------------|-----------|---------|----|--------------------|
| Murray, megan | megan.murray@leg.state.nh.us | Not Given | An Elected Official | Hills. 22 | Support | No | 4/13/2021 6:19 AM |
| Goldwater, Catherine | cathy.goldwater@gmail.com | 603.860.3756 | A Member of the Public | Myself | Support | No | 4/13/2021 6:26 AM |
| Damon, Claudia | Cordsdamon@gmail.com | Not Given | A Member of the Public | Myself | Support | No | 4/12/2021 10:24 PM |
| Spencer, Louise | lpskentstreet@gmail.com | 603.491.1795 | A Member of the Public | Myself | Support | No | 4/12/2021 10:27 PM |
| MacGregor, Leslie | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 6:39 AM |
| Vien, Janice | sljv@comcast.net | 603.863.1798 | A Member of the Public | Myself | Support | No | 4/13/2021 6:55 AM |
| Jachim, Nancy | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 6:57 AM |
| Verschueren, Jim | jd.verschueren@gmail.com | 603.978.0398 | A Member of the Public | Myself | Support | No | 4/12/2021 10:42 PM |
| Hinebauch, Mel | melhinebauch@gmail.com | 603-224-4866 | A Member of the Public | Myself | Support | No | 4/12/2021 10:52 PM |
| Brookmeyer, Janet | brookmeyermusic@gmail.com | 603.667.1356 | A Member of the Public | Myself | Support | No | 4/13/2021 7:03 AM |
| Covert, Susan | scovert@comcast.net | 603.746.4486 | A Member of the Public | Myself | Support | No | 4/13/2021 7:12 AM |
| Schmidt, Jan | tesha4@gmail.com | 603.880.6060 | An Elected Official | Myself | Support | No | 4/13/2021 7:32 AM |
| Clark, Denise | denise.m.clark03055@gmail.com | 603.213.1692 | A Member of the Public | Myself | Support | No | 4/13/2021 7:47 AM |
| Platt, Elizabeth-Anne | lizanneplatt09@gmail.com | 603-715-8191 | A Member of the Public | Myself | Support | No | 4/13/2021 7:47 AM |
| Ellermann, Maureen | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 7:48 AM |
| DeMark, Richard | demarknh114@gmail.com | 603.520.5582 | A Member of the Public | Myself | Support | No | 4/13/2021 7:50 AM |
| Douville, Linda | Not Given | Not Given | A Member of the Public | Myself | Support | No | 4/13/2021 8:02 AM |

Testimony

STATEMENT BY ALBERT SCHERR
PROFESSOR OF LAW, UNH FRANKLIN PIERCE SCHOOL OF LAW
SENATE JUDICIARY COMMITTEE
HOUSE BILL 270
APRIL 13, 2021

I have been on the faculty at UNH Law for about 27 years and, prior to that, I was a public defender in New Hampshire for 13 years. I have been involved in the criminal legal system in New Hampshire for almost 40 years now. One of my areas of particular expertise is forensic DNA evidence. I was involved in the first DNA case in New Hampshire, a murder case, and I have litigated or advised on the litigation of many DNA cases in this and other states for the last 30 years.

I also represented an individual for 13 years on a challenge to his murder conviction using post-conviction DNA testing in collaboration with the National Innocence Project and the New England Innocence Project. I also founded the Innocence Practicum at UNH Law in which students work with the New England Innocence Project to screen cases for the possible use of post-conviction DNA testing.

I make this statement in my individual capacity, and the opinions I am expressing are solely mine and are not those of either UNH Franklin Pierce School of Law or of the University of New Hampshire. I appreciate the opportunity to testify before this committee and ask you to vote *ought to pass* on HB 270.

HB 270 is a low-cost house-keeping measure that improves the existing post-conviction DNA statute without opening up the floodgates to waves of litigation. To date, the statute has been used rarely. I can recall only one case, the case to which I referred above, as having used the statute in the last 10 years. I have done an informal survey of over 100 criminal defense lawyers in the state and none were aware of any petitions even being filed, let alone testing ordered. The Administrative Office of the Courts is not able to track the existence of any such petitions in the past and, in my conversations with the Judicial Council, they are clear that they do not anticipate the mild expansion of the statute's coverage to impose any significant additional cost to the indigent defense system.

The existing statute puts forward a complicated process that is difficult for prisoners to understand, let alone successfully even get a hearing on their request for testing. HB 270 makes the process clearer; eases some of the difficult burdens and gets a lawyer involved early enough in the process (after a preliminary screening by the court) so the individual can make a claim that captures any problem. And, the involvement of a lawyer will help screen out frivolous petitions.

As an example, in the post-conviction DNA case mentioned above, we had a difficult time getting a judge to use the statute, let alone grant the request for DNA testing, primarily because the statute was very confusing as to its interplay with other statutes concerning any time limit for filing a petition. HB 270 clears up that confusion.

More broadly and as others will describe, access to post-conviction DNA testing is an essential check on the inevitable imperfections in our criminal justice system. We know with certainty from more than 25 years of work by the National Innocence Project and many others that wrongful convictions occur. They occur in mistaken eyewitness identification

cases. They occur on false confession cases. They occur in ineffective lawyering cases. They occur even in cases in which DNA or other forensic evidence has been prevented. HB 270, though primarily a housekeeping bill, is an important improvement on the criminal justice system's ability to account for its mistakes.

I ask you to vote *ought to pass* on HB 270.

Innocence Project Testimony in Support of HB 270
Before the New Hampshire Senate
Judiciary Committee
April 13, 2021

The Innocence Project is a national organization dedicated to exonerating wrongfully convicted people through postconviction DNA testing and reforming the criminal justice system to prevent future injustice. We work with our local partners across the country, including the New England Innocence Project, on policies that prevent and address wrongful conviction. We thank the Senate Judiciary Committee for its consideration of this greatly needed reform. The Innocence Project strongly supports HB 270.

Nationally, there have been 375 DNA exonerations however none have occurred in the state of New Hampshire. HB 270 proposes to improve the current postconviction DNA testing statute to allow more efficient access to post-conviction DNA testing and enable the revelation of wrongful convictions.

Extremely high threshold to obtain testing

Every state has a threshold to determine if one can obtain post-conviction DNA testing. New Hampshire's threshold to obtain testing is extremely high and out of line with the majority of states. New Hampshire's law requires the high burden of showing by "clear and convincing" evidence that the results of the testing would "exonerate" the petitioner simply to allow DNA testing to occur. HB 270 would give New Hampshire's wrongfully convicted fairer access to post-conviction DNA testing by adjusting the standard for testing to allow petitioners testing if they can show by a "preponderance of the evidence" that they "would not have been convicted" - among many other criteria. Twenty-five other states require a "reasonable probability" standard for testing with eighteen of those requiring the results show they "would not have been convicted." Only three other states in addition to New Hampshire require such an extremely strict "clear and convincing" standard to simply allow DNA testing to occur. Providing for a lower threshold to enable testing does not result in automatic exoneration; it simply lowers the threshold required to *obtain* post-conviction DNA testing, the results of which would then be considered by the court in the context of the larger case. The current standard, in many instances, prevents consideration of an innocence claim at the earliest stage by creating a barrier to a simple DNA test.

Denial of testing due to "timeliness"

In contrast to the vast majority of other states, New Hampshire's DNA testing law allows for arbitrary determinations of "timeliness" to deny claims. Thus even if all substantive criteria are met, a petition for postconviction DNA testing can be denied due to not being filed in a timely

manner, which is undefined. HB 270 would prevent petitioners from being denied testing on such grounds alone.

Appointment of Counsel

The post-conviction DNA testing statute already allows courts to appoint counsel to a petitioner, however the statute allows this late in the process, after the petitioner has already completed much of the process on their own. HB 270 moves up and guarantees appointment of counsel for those whom a judge determines meet the initial criteria. Thirty-three states appoint counsel to indigent defendants who are submitting post-conviction DNA claims. Of those, fourteen states stipulate the court “shall appoint” counsel and two states stipulate “must” appoint counsel. Providing for counsel earlier in the process not only enables justice for a potentially innocent defendant; it also allows counsel to help develop a robust petition, which assists the court in its consideration of the claim.

Ability for the entire sample to be consumed in one test

In some instances there may be the need to re-test a sample however this is not possible if the entire sample is consumed or “used up” in one test. Generally samples are re-tested when the initial test is inconclusive and a more advanced or discriminatory DNA testing method becomes available. While at times the entire sample may be needed to complete a test, HB 270 ensures that consumptive testing only occurs if both the prosecution and petitioner agree or by order of the court.

Lack of an evidence inventory and discovery

Currently by statute the Attorney General or county attorney is required to ensure biological material subject to testing is preserved pending the completion of the proceedings. However, there is no requirement to inform the petitioner on the location and condition of evidence or to provide other relevant discovery materials. This puts petitioners at a disadvantage in that they may not know what exists that could be tested.

Only currently incarcerated people may petition for testing

The vast majority of states do not have an “incarceration requirement” to seek DNA testing. New Hampshire is one of only eleven states that limit testing to those currently incarcerated. Having a requirement that a petitioner be incarcerated bars relief for an innocent person who has been released from custody but is still suffering under the many serious collateral consequences of a criminal conviction including parole, probation or a sex offender registry. Without the ability to test DNA, someone in a situation like this may be unable to seek testing that could ultimately prove their innocence.

Removing requirement that petition identify specific type of DNA testing sought

Identifying the exact type of DNA testing that is being sought is a challenging and often impossible requirement for a petitioner. The vast majority of petitions are filed by incarcerated

INNOCENCE PROJECT

Executive Director
Christina Swarns

Co-Founders & Special Counsel
Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.

individuals on their own behalf and they may not have access to this type of technical information. A petitioner must show many stringent criteria such as how the testing may reveal that they are innocent, what evidence should be tested, why it was not tested before and/or why new testing now would offer more probative results. HB 270 maintains these steep criteria but eliminates the often impossible requirement of stating the specific testing that is being requested.

Passage of HB 270 would clarify and modernize the current process for seeking DNA testing post-conviction. This change would not make it any easier or lessen the standard by which a conviction is overturned but rather would simply create a clearer path for obtaining DNA testing. These changes not only benefit the innocent; often in the course of settling an innocence claim, the actual perpetrator of the crime is also identified and therefore prevented from committing additional crimes. While the criminal justice system is a human system, and therefore makes mistakes, it is the responsibility of the government to ensure that these miscarriages of justice can be identified and remedied. Changes to the existing post-conviction DNA testing law would enable justice for the few that have experienced the unique horror of wrongful conviction who could benefit from proving their innocence through DNA testing. Thank you for considering these recommendations. Any questions or comments can be directed to Elizabeth Powers at epowers@innocenceproject.org.



**NEW
ENGLAND
INNOCENCE
PROJECT**

120 Tremont Street
Suite 735
Boston, MA 02108
617.557.6582

**Cynthia Mousseau
NH Staff Attorney, New England Innocence Project
Testimony on HB 270
Tuesday April 13, 2021**

My name is Cynthia Mousseau and I am the NH Staff Attorney from the New England Innocence Project, an organization that works to correct and prevent wrongful convictions throughout New England. I want to start by thanking the committee for considering my words on this proposed amendment to the post-conviction DNA testing statute. I am here because in this age of technology, access to post-conviction DNA testing is critical to protecting innocent people from continued wrongful incarceration. As science changes, the relationship of science and the law also must change to promote the integrity of the criminal legal system.

New Hampshire is a very special state, as we all know. One of the unique facts about New Hampshire is that there have been no exonerations in this state due to post-conviction DNA testing. We would love to believe that this is because we have a flawless criminal legal system here with perfect attorneys and judges. But the reality of human nature dictates that we all make mistakes and studies in this country show that the lack of exonerations is not likely an accurate representation of the amount of wrongful convictions within a state. Post-conviction litigation can be daunting and confusing and is often initiated without the aid of an attorney. Just the words "post-conviction litigation" would be enough to send many people in search of a dictionary. Adding science into the stew of legalese only serves to further muddy the waters. Just ask Gary Cifizzari. Gary was exonerated in December of 2019 after spending 35 years in prison for a brutal assault and murder that he did not commit.

Gary was convicted of the crime in 1984. He maintained his innocence from the very beginning. So why did it take so long for Gary's conviction to be overturned?

It certainly wasn't for lack of trying. First, Gary appealed his conviction and lost. Then, 12 years after his conviction, he filed a motion for new trial, pro se, meaning without an attorney. Given Gary's limited cognitive abilities, this filing was a monumental feat. But Gary knew he hadn't done anything wrong. The court sent the case the Massachusetts Committee for Public Counsel Services to see if Gary could get an attorney to help him. CPCS declined to give Gary an attorney. The court then denied Gary's motion, partly on the basis of procedural errors. Procedural errors are exactly the types of errors that attorneys are best at illuminating. Court rules, timelines, and other technical requirements for legal practice are accessible and navigable for an experienced attorney. For a person unfamiliar with the criminal legal system, these issues are frustrating at best and incomprehensible and defeating at worst.

Science changed the landscape of criminal trials with the advent of DNA testing in the 90s. In 2003, Gary tried to apply the new technology to help him pursue his freedom. He filed a motion for post-conviction DNA testing. He didn't know a lot about DNA but he knew he was innocent so he knew HIS DNA wouldn't be present. At that time, no statute existed to explicitly require post-conviction DNA testing. And Gary did not have an attorney, could not demonstrate he was entitled to an attorney, and did not understand the legal mechanism to get testing -- so his request

was denied. Undeterred, Gary filed another motion for testing in 2006. Still having no attorney, and still without a statute to protect Gary's rights to the testing, he was denied again.

In 2012, Massachusetts became the 49th state to pass a post-conviction DNA testing statute. In 2017, thirty-three years after Gary's conviction, the executive director of the New England Innocence Project, Radha Natarajan, learned of Gary's plight and took on his case. Using the new statute, the court authorized DNA testing in 2018. In February of 2019, DNA testing results began rolling in: Gary was not a match to the DNA found at the scene. Instead, the DNA matched the first suspect the police had questioned immediately after the crime occurred in 1984. After a second round of testing later in 2019, the District Attorney dropped the case against Gary. Finally, after 35 years of incarceration for a crime he never committed, Gary was free.

Without the statute, without an attorney, Gary Cifizzari could very well remain incarcerated to this day. If Gary could have received counsel in 2003, he might have been released 15 years earlier. He would have seen his mother before she passed away in 2006. He could have had that many more birthdays and Christmases in freedom rather than in prison.

I know this is not a case from New Hampshire. But there haven't been any DNA exonerations in New Hampshire. And Gary's case may highlight some reasons why. One of the lessons that Gary's case teaches us is that if the laws allow it, some innocent people's cases will fall through the cracks. The amendments that are proposed today fill in some of those cracks. By ensuring attorney involvement earlier on in the post-conviction process, we provide innocent people with a means of accessing guides in a foreign landscape. By changing the standard of proof and providing for discovery, we ensure that those that are innocent are given a fair chance to access life-saving evidence. By eliminating a timing requirement, we show that there is no expiration date for justice. By providing that consumptive testing must only be done by agreement, we prepare for a future where testing may be even more exacting. None of these changes are dramatic but the consequences of the changes may be for someone.

Jennifer Horgan

From: David Blair <orionblair@gmail.com>
Sent: Sunday, April 11, 2021 10:43 AM
To: Jay Kahn; Sharon Carson; Harold French; William Gannon; Becky Whitley
Cc: Jennifer Horgan
Subject: bills before the Senate Judiciary Committee

Dear members of the Senate Judiciary Committee,

You have a very full week ahead of you, and I wish you wisdom as you consider some very important bills.

I am writing to express my support for all of the following bills, which will come before you on Tuesday, Wednesday and Thursday:

HB 270 (post-conviction DNA testing)
HB 615 (reduction of penalty for certain first offense drug possessions)
HB 436 (eyewitness identification)
HB 474 (public surveillance on public ways)
HB 471 (police disciplinary hearings)
HB 485 (right to refuse consensual search)

Thank you all for your work on behalf of justice and safety for all NH residents!

Sincerely,

David Blair
77 South Road
Harrisville, NH

Jennifer Horgan

From: Rachel Edelson <redelson@hotmail.com>
Sent: Monday, April 12, 2021 9:42 PM
To: Jennifer Horgan
Subject: Urging SUPPORT for These Bills

Dear Committee Aide Jennifer Horgan,

As an involved resident of Nashua I wrote to the members of the Judiciary committee to express my **SUPPORT** these Bills which are going to be voted on this week:

HB 270
HB 615
HB 436
HB 474
HB 471
HB 485

Thank you for your work as part of our democracy.

Sincerely,
Rachel Edelson
Bay Ridge Apts.
Nashua NH 03062

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB270

Hearing date: _____

Executive Session date: _____

Motion of: OTP 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: 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 checked="" 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: _____ 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: French

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, April 21, 2021

THE COMMITTEE ON Judiciary

to which was referred HB 270-FN

AN ACT relative to post-conviction DNA testing.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Harold French
For the Committee

This bill amends and clarifies the statute governing post-conviction DNA testing procedures including, in which court an individual would make the application, the implementation of a provision to assign an attorney to a qualifying individual, clarification of the process for testing, what labs will be used, how the results will be shared, and setting the judicial standard to a preponderance of the evidence for authorization of the testing. This bill gives someone who is wrongfully convicted a clear path to seek their freedom, while retaining existing safeguards to protect the state against frivolous claims.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 270-FN, relative to post-conviction DNA testing.

Ought to Pass, Vote 5-0.

Senator Harold French for the committee.

This bill amends and clarifies the statute governing post-conviction DNA testing procedures including, in which court an individual would make the application, the implementation of a provision to assign an attorney to a qualifying individual, clarification of the process for testing, what labs will be used, how the results will be shared, and setting the judicial standard to a preponderance of the evidence for authorization of the testing. This bill gives someone who is wrongfully convicted a clear path to seek their freedom, while retaining existing safeguards to protect the state against frivolous claims.

General Court of New Hampshire - Bill Status System

Docket of HB270

Docket Abbreviations

Bill Title: relative to post-conviction DNA testing.**Official Docket of HB270.:**

| Date | Body | Description |
|-------------|-------------|--|
| 1/9/2021 | H | Introduced (in recess of) 01/06/2021 and referred to Criminal Justice and Public Safety HJ 2 P. 41 |
| 2/26/2021 | H | Public Hearing: 02/26/2021 09:45 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92701022260 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened. |
| 3/2/2021 | H | Committee Report: Ought to Pass (Vote 20-0; CC) HC 18 P. 6 |
| 4/7/2021 | H | Ought to Pass: MA VV 04/07/2021 HJ 5 P. 7 |
| 4/7/2021 | H | Reconsider (Rep. Osborne): MF VV 04/07/2021 HJ 5 P. 50 |
| 4/7/2021 | S | Introduced 04/01/2021 and Referred to Judiciary; SJ 11 |
| 4/8/2021 | S | Remote Hearing: 04/13/2021, 01:45 pm; Links to join the hearing can be found in the Senate Calendar; SC 19 |
| 4/21/2021 | S | Committee Report: Ought to Pass, 04/29/2021; Vote 5-0; CC; SC 21 |
| 4/29/2021 | S | Ought to Pass: RC 24Y-0N, MA; OT3rdg; 04/29/2021; SJ 13 |
| 5/6/2021 | S | Enrolled Bill Amendment #2021-1285e RC 23Y-0N, AA , (In recess of 05/06/2021); SJ 15 |
| 5/17/2021 | S | Enrolled Adopted, VV, (In recess 05/13/2021); SJ 16 |
| 5/6/2021 | H | Enrolled Bill Amendment #2021-1285e: AA VV (in recess of) 04/09/2021 HJ 7 P. 102 |
| 5/17/2021 | H | Enrolled (in recess of) 04/09/2021 HJ 7 P. 104 |
| 5/27/2021 | H | Signed by Governor Sununu 05/25/2021; Chapter 49; Eff: 07/24/2021 |

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB070

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 Horgan
Committee Aide

8/12/21
Date

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