

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. Cushing

Rep. Schapiro

Rep. Moran

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