Bill as Introduced

HB 134 – AS INTRODUCED

2001 SESSION

01-0028
09/10

HOUSE BILL ***134***

AN ACT permitting challenges to judges.

SPONSORS: Rep. Soltani, Merr 10; Rep. Marshall Quandt, Rock 20; Rep. Pepino, Hills 40; Sen. Roberge, Dist 9

COMMITTEE: Judiciary

ANALYSIS

This bill permits each party one challenge to the justice assigned to the case.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 134 - AS INTRODUCED

01-0028
09/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT permitting challenges to judges.

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

1 New Section; Courts; Superior Court; Challenges. Amend RSA 491 by inserting after section 3-a the following new section:

491:3-b Challenges. Each party to any case before the superior court may request that one justice of the court, or one marital master in a case that may be heard by a marital master, not be assigned to the case. Such request shall be filed with the court, in writing, within 30 days after arraignment in any criminal case, and within 30 days of the return date in any other case. Upon timely filing of such a request, the clerk of the court shall not schedule the case in question with the justice or marital master named in the request.

2 New Section; Courts; District Courts; Challenges. Amend RSA 502-A by inserting after section 6-b the following new section:

502-A:6-c Challenges. Each party to any case before the district court may request that one justice of the court not be assigned to the case. Such request shall be filed with the court, in writing, within 30 days after arraignment in any criminal case, and within 30 days of the return date in any other case. Upon timely filing of such a request, the clerk of the court shall not schedule the case in question with the justice named in the request.

3 Effective Date. This act shall take effect January 1, 2002.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 134 Date 1-10-01

Committee JUDICIARY

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Jo Ann Quinn	45 Franklin Exeter	772-3417	Rockingham	✓	
Matt Quinn	45 Franklin St Exeter	772 3417	Rock 20	✓	
~~CARL SCHEIDEGG 10 CAMARRAN DR.~~				✓	
HARRIET Cady					
DICK MARPLE		627-1837		✓	
Rep. Lars Christiansen			Dist 23 Hudson	✓	
JOHN MACINTOSH	CONCORD	225-9801	NH BAR ASSOCIATION		✓
Tina Nadeau	Concord	271-2020	Supr. of Ct.		✓
Elaine Abel	18 Low Av.	Concord 225-3080	DHHS		concerns

HB 134 permitting challenges to judges.

Pink Cards

Rep. Soltani, Supports bill.

Harriet E. Caddy, PO Box 149, Deerfield, 463-9727. Supports bill.

Sen. Roberge, Supports bill.

Carl Scheidegg, 10 Cimmarron Dr., Nashua, 883-1651. Supports bill.

*Tina Nadeau, representing superior & district courts. 99 No. State St., Concord, 271-2030. Opposes bill.

Martin Jenkins, representing Trial Lawyers Assn., 11 Hope Lane, Bow, 433-1830. Opposes bill.

Ken Blevens, 2 Valley Rd., Bow, 225-3547

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 134

BILL TITLE: permitting challenges to judges.

DATE: January 10, 2001

LOB ROOM: 208 **Time Public Hearing Called to Order:** 2:56 p.m.

Time Adjourned: 3:45 p.m.

(please circle if present)

Committee Members: Reps. Mock, L. Jean, Jacobson, Bergin, Rowe, Ford, Dudley, Soltani, P. Woods, Rice, Leishman, Elliott, Reid, Wall, J. Pratt, Craig, J. Wood, Potter, Espiefs and Franklin.

Bill Sponsors: Reps. Soltani, Marshall Quandt, Pepino; Sen. Roberge

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

SEE ATTACHED NOTES

Respectfully submitted,

Terri C. Dudley

Rep. Terri C. Dudley
Committee Clerk

HB 134 1/10/2001 JUDCIARY

PRIME SPONSOR: REP. SOLTANI

TESTIMONY: REP.SOLTANI: JUDGES DO NOT ALWAYS EXCUSE THEMSELVES FOR CAUSE.

REP. JEAN: WHAT % OF JUDGES HAVE YOU ASKED TO EXCUSE THEMSELVES?
ANS: 2 IN 10 YEARS. NEITHER DID SO.

REP. WOOD: ARE THERE ENOGH JUDGES TO FILL VOID?
ANS: USUALLY NOT A PROBLEM.

REP. DUDLEY: CAN YOU STATE EXAMPLES OF WHEN A PERSON MIGHT ASK A JUDGE TO RECUSE HIM /HE SELF?
ANS: THERE ARE NO RULES WHERE A JUDGE IS PREVENTED FROM PRESIDING AT A RELATIVES TRIAL.

REP. ELLIOT: QUESTIONED ABOUT "30 DAY." AND WHETHER THE TIMELINE WAS CONSISTENT WITH THE INTENT OF THE BILL.
ANS: YES

WITNESS HARRIET CADY: THERE IS A SUIT IN ROCKINGHAM PARK WHERE I (CADY) AM FILING A SUIT AGAINST A JUDGE. FOR BEING RUDE AND CRUDE TO A DEFENDANT.

WITNESS SEN. ROBERGE: A JUDGE DOES NOT HAVE TO OFFER A PERSON TO RECUSE HIM/HERSELF.

REP. JEAN: IS A PERSON ALLOWED ONLY ONE CHALLENGE?
ANS: YES, ONLY ONE BITE OF THE APPLE.

POINTS OF CLARIFICATION: REP. CRAIG, LEISHMAN, WOODS,

WITNESS CARL SCHEIDEGG: THERE IS OTHING IN THE LAW THAT PREVENTS OTHER JUDGES TO BE ASKED TO BE RECUSED IF THE SECOND JUDGE CHOSEN IS STILL NOT DESIRABLE TO HEAR CASE.

WITNESS, ATTORNEY TINA NADEAU: OPPOSES BILL. NH TOO SMALL A STATE FOR THIS BILL TO BE PASSED. THERE ARE NOT ENOUGH JUDGES.

REP. ELLIOT: IF A JUDGE IS ASKED TO RECUSE THEMSELVES, DOES THE JUDGE CHOOSE THE NEXT JUDGE?
ANS. UNSURE

REP. JACOBSON: ARE PART-TIME JUDGE ABLE TO REPLACE FULL-TIME JUDGES?
ANS: THERE ARE NOT ENOUGH PART-TIME JUDGES TO RESPOND TO PREEMTORY CHALLENGES FROM BOTH DEFENDANTS AND PROSECUTORS.

REP. CRAIG: IS THERE A LIST OF TIMES WHEN A JUDGE SHOULD EXCUSE THEMSELVES?
ANS: YES. IN THE CODE OF CONDUCT, BUT NO ACTUAL LIST.

REP. LEISHMAN: ASKED IF ATTY. NADEAU HAD EVER RECUSED HERSELF.
ANS: YES. JUDGES FREQUENTLY RECUSE THEMSELVES.

WITNESS: MARTIN JENKINS, TRIAL LAWYERS ASSOCIATION. OPPOSES BILL. THIS CAN BE A LAWYERS REVENGE. BILL IS COSTLY, IMPRACTICAL.

REP. JEAN: CAN SEE MANY PROBLEMS WITH THIS ARGUMENT.

REP. FRANKLIN: WHAT IS WRONG WITH REQUESTING ANOTHER JUDGE?

WITNESS, KEN BLEVENS: ADDRESSED 73A. LITIGANT APPEARS BEFORE A JUDGE ON 4 OCCASSIONS, THE JUDGE IS NOT IMPARTIAL BUT REFUSES TO RECUSE HERSELF.THIS BILL WILL CULL OUT BAD JUDGES.

Testimony

OFFICE OF
CLERK OF SUPERIOR COURT
STRAFFORD COUNTY

JULIE W. HOWARD, CLERK
SUSAN W. ASHLEY, DEPUTY CLERK

(603) 742-3065

P.O. BOX 799
DOVER, NEW HAMPSHIRE
03821-0799

FILE COPY

January 10, 2001

Henry Mock, Chairman
House Judiciary Committee
Legislative Office Building
Concord, NH 03301

RE: House Bill HB 134

Dear Chairman Mock:

Mr. Chairman, honorable committee members, it is a pleasure to appear before you again. My name is Tina Nadeau and I appear on behalf of the Superior and District courts to express our opposition to HB 134.

First, let me say that Chief Justice Murphy had hoped to testify today but was unable to do so because he is hearing cases in Nashua. He asked that I appear on his behalf to explain the rationale behind the court's position on this bill.

I know there are few things more important to the Legislature than to ensure the court dispenses justice impartially, fairly and with compassion. Each member of the court shares that goal. This bill, however, would undermine your efforts to achieve justice and the court's role to provide justice.

I understand the goals of the sponsors in attempting to address perceived prejudice they believe exists on the bench. But the practical adverse effects of this bill on a small state like

New Hampshire are substantial. The bill will not address potential prejudice, but rather will encourage judge shopping and destroy the unique advantages litigants enjoy from a small State like New Hampshire in which lawyers, judges and the legislature have been able to provide early and expedient access to the courts. Indeed, the Superior Court in New Hampshire has been in the past first in the nation for the efficient disposition of cases.

We recognize that efficiency is not the only attribute of a successful judiciary; justice must be provided with impartiality. But I'd like you to know that in those small number of cases where the perception of partiality may exist, there is already a mechanism for challenging the judge and receiving another judicial assignment. In both the district and Superior Courts, if a party can set forth reasonable facts to demonstrate a legitimate risk that fairness and impartiality will be jeopardized, or that there is a reasonably supported perception of partiality, the trial judge will routinely grant a motion for re-assignment and a new judge will be assigned.

Another valued trait in any judicial system is public accessibility. HB 134 would substantially undermine this goal. It would cause delays in litigation. It would implicate additional legal fees and expenses. It would cripple the efficient scheduling of judge time and cost the State precious dollars in scarce judicial resources. The result would be extremely disruptive to every day litigants.

Let me talk frankly about the effect of this bill. It will

permit lawyers to challenge a judge for no valid reason. For instance, a lawyer may disagree with the sentencing philosophy of the judge or may dislike the judge because he or she demands high standards for performance. These are legitimate and appropriate tensions within any courtroom.

In controlling the courtroom and in managing the efficient disposition of cases, judges must often make decisions lawyers don't like. In addition, it is the nature of an adversarial system to produce a winner and a loser. In such a system, judges must weigh competing interests, analyze the law and produce just results. In such a system, not every litigant is pleased with the result. But every potential litigant is assured of objectivity and principled application of the law. If judges attempted to please everyone, rather than apply constitutional and legal principles to the disputes that come before them, the results would not be just, but rather unfair, unsound and unreasoned.

Aside from the potential negative impact on valued judicial policy, let me describe some of the more practical effects of this bill. First with regard to the Superior Court: In three of the eleven county courthouses only one judge presides. In two of the courthouses one judge presides for six months and two judges preside for six months. In one courthouse two judges preside. That means in over half of our Superior courts, only one or two judges preside at a time. There are 39 district courts. Of those 39 courts, only 5 locations have more than 2 judges presiding at a time. If this bill were to take effect, and parties routinely

exercised a challenge, those courthouses would be extremely handicapped. Literally, the operation of some courts could even be brought to a stand still. In 1999 the Superior Court disposed of over 51,000 cases. If this bill were law, then there would have been a potential for 102,000 challenges, which need to have no rational basis.

As a result of seeking relief under HB 134, parties may be forced to travel out-of-county to have their case heard by another judge. More significantly, however, parties who haven't even raised a challenge may experience delays in their court hearings that would be required to accommodate the disruption in scheduling caused by those who do challenge a judge.

And imagine the problems that would occur in criminal cases. Generally, the same few public defenders and the same few prosecutors handle the majority of criminal cases in each county. If a prosecutor or public defender exercised their right to challenge one judge, then presumably they would do so in every case. Does that mean all criminal cases from one county would be transferred to another? Or would judges have to rotate on a daily or weekly basis to cover criminal trials in other counties? If so, the application of HB 134 raises substantial constitutional concerns.

The judiciary might have a different position if there were ten or fifteen judges sitting in one court location, as there are in states or large urban courts where this practice occurs. But this is New Hampshire. And the Legislature historically has been

reluctant to apply a big state remedy to issues raised in New Hampshire.

As you know, the concept in this bill is not new. It is identical to the concept that was introduced and rejected last session. Personally, I hope my appearing here to testify on this old concept does not give the committee the misimpression that the Superior Court, or any other court, opposes reasonable improvement to the judicial system. Simply, we ask you not pass this bill because of its adverse effects on the timely resolution of disputes. We ask you not to pass this bill because it will inconvenience parties and witnesses in everyday cases. We ask you not to pass this bill because it will result in additional costs to the citizens of this state. And we ask you not to pass this bill because it will interfere with basic judicial economy; specifically, the common sense allocation of resources, and the efficient scheduling of judicial time.

Thank you.

Sincerely yours,

Tina L. Nadeau
Associate Justice

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 134

BILL TITLE: **permitting challenges to judges.**

DATE: February 8, 2001

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Soltani

Seconded by Rep. Franklin

Vote: 9-8 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Terri C. Dudley, Clerk

Terri C Dudley

OFFICE OF THE HOUSE CLERK

2001 SESSION

JUDICIARY

Bill #: 134 Title: Permitting Challenges to Judges

PH Date: ___/___/___ Exec Session Date: 02/08/2001

Motion: OTP Amendment #:

MEMBER	YEAS	NAYS
Mock, Henry P, Chairman	ABSENT	
Jean, Loren J, Vice Chairman	✓	
Jacobson, Alf E	✓	
Bergin, Peter F	AB	
Rowe, Robert H		✓
Ford, Nancy M		
Dudley, Terri C	✓	
Soltani, Tony F	✓	
Woods, Phyllis L	✓	
Rice, Thomas	✓	
Leishman, Peter R	✓	
Elliott, Larry G	✓	
Reid, Christopher P		✓
Wall, Janet G		✓
Pratt, John M		✓
Craig, James W		✓
Wood, Jane		✓
Potter, Frances D		✓
Espiefs, Peter S		✓
Franklin, Peter E	✓	
TOTAL VOTE:	9	8

Printed: 12/27/2000

Committee Report

MAJORITY
COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 134**

TITLE: permitting challenges to judges.

DATE: February 8, 2001 CONSENT CALENDAR YES ☐ NO ☒

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Presently, there is no requirement that a judge disqualify himself/herself from a case for any reason. The discretion to remain on the case remains with the judge even in the most egregious cases. This bill allows a party to request that a single judge not be assigned to the case. Additionally, the notice must be filed within thirty days of the return date in the initial stage of the legal action. This notice requirement allows more than an adequate opportunity to accommodate a citizen's request through administrative assignment. The judicial system is well capable of accommodating the needs of the people, judges and litigation to ensure that the notion of justice, and the appearance of justice, is well preserved.

Vote 9-8.

Rep. Tony F. Soltani
FOR THE MAJORITY

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Judiciary

HB 134, permitting challenges to judges. OUGHT TO PASS

Rep. Tony F. Soltani for Judiciary: Presently, there is no requirement that a judge disqualify himself/herself from a case for any reason. The discretion to remain on the case remains with the judge even in the most egregious cases. This bill allows a party to request that a single judge not be assigned to the case. Additionally, the notice must be filed within thirty days of the return date in the initial stage of the legal action. This notice requirement allows more than an adequate opportunity to accommodate a citizen's request through administrative assignment. The judicial system is well capable of accommodating the needs of the people, judges and litigation to ensure that the notion of justice, and the appearance of justice, is well preserved. Vote 9-8.

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COMMITTEE: Judiciary

ANALYSIS

This bill permits each party one challenge to the justice assigned to the case.

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.

~~The~~
presently, there is no requirement that a judge disqualify himself/herself from a case ~~of the~~ ~~recuse~~ for any reason. The discretion to remain on the case remains with the judge even in the most egregious cases. This bill allows a party to request that a single judge not be assigned to the case. Additionally, the notice must be filed within thirty days of the return date in the initial stage of the legal action. This notice requirement allows more than an adequate opportunity to accommodate a citizen's request through administrative assignment. The judicial system is well capable of accommodating the needs of the people, judges and litigants to ensure that the notion of justice, and the appearance of justice is well preserved.

MINORITY
COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 134**

TITLE: permitting challenges to judges.

DATE: February 8, 2001 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Parties to legal actions currently have the right to move to recuse a judge where the judge has a real or apparent conflict of interest. This bill would encourage forum shopping and would create serious administrative burdens and delay justice, especially in the smaller counties, where only one or two judges may be sitting.

Vote .

Rep. Christopher P. Reid
FOR THE MINORITY

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Judiciary

HB 134, permitting challenges to judges. INEXPEDIENT TO LEGISLATE

Rep. Christopher P. Reid for Judiciary: Parties to legal actions currently have the right to move to recuse a judge where the judge has a real or apparent conflict of interest. This bill would encourage forum shopping and would create serious administrative burdens and delay justice, especially in the smaller counties, where only one or two judges may be sitting. Vote .

Christopher Reid

Parties to legal actions currently have the right to move to recuse a judge & when ~~there is a conflict~~ the judge has a real or apparent conflict of interest. This bill would ~~create serious~~ encourage forum shopping and would create serious administrative burdens and delay justice, especially ~~where~~ in the smaller counties, where only one or two judges may be sitting.

? A ~~substantial~~ right already exists though ~~not~~ peremptory?