# Bill as Introduced

HB 418 – AS INTRODUCED

2003 SESSION

03-0514
09/10

HOUSE BILL ***418***

AN ACT relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.

SPONSORS: Rep. Derby, Carr 7

COMMITTEE: Criminal Justice and Public Safety

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ANALYSIS

This bill permits a defendant whose case resulted in acquittal, dismissal or failure to prosecute to make a post-trial motion for annulment of the arrest record. The bill also removes the requirement that a $100 fee be charged to a defendant who petitions for annulment of an arrest record.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 418 – AS INTRODUCED**

03-0514
09/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Three*

AN ACT relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.

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

1 Annulment of Criminal Records. Amend RSA 651:5, II to read as follows:

II. Any person whose arrest has resulted in a finding of not guilty, or whose case was dismissed or not prosecuted, may petition for annulment of the arrest record at any time in accordance with the provisions of this section. ***Immediately upon court order issuing upon a finding of not guilty or when the case is dismissed or not prosecuted, the defendant may immediately file a petition for annulment of record. If this petition is filed immediately following an acquittal in court, the court shall inquire of the state if it plans on making an appeal. If it does not, the court may immediately act upon the petition for annulment of the record of arrest, immediately granting the same if the court deems it appropriate to do so.***

2 Annulments of Criminal Records; Investigations; Fees. RSA 651:5, IX is repealed and reenacted to read as follows:

IX. When a petition for annulment is timely brought seeking annulment of a record of conviction, the court shall require the department of corrections to make a report concerning any state or federal convictions of arrest or prosecutions of the petitioner and any other information which the court believes may aid in making a determination on the petition. The department shall charge the petitioner a fee of $100 to cover the cost of such investigation, unless the petitioner demonstrates that he or she is indigent. The court shall provide a copy of the petition to the prosecutor of the underlying offense and permit the prosecutor to be heard concerning the interests of justice with regard to the petition. When a petition of annulment of a record of arrest is brought pursuant to paragraph II, the court shall not require the payment of the $100 fee to cover the cost of investigation. The court, in its discretion, may order an investigation by the department of corrections and report concerning the same issues raised as if a record of conviction were being requested and the court may, in its discretion, taking into consideration any documents filed with the petition for annulment including a statement from the petitioner immediately upon entry of a petition to annul record of arrest, grant the same without further proceedings.

3 Effective Date. This act shall take effect January 1, 2004.

# Amendments

Rep. Knowles, Straf. 69
March 5, 2003
2003-0542h
09/01

Amendment to HB 418

Amend RSA 651:5, II as inserted by section 1 of the bill by replacing it with the following:

II. Any person whose arrest has resulted in a finding of not guilty, or whose case was dismissed or not prosecuted, may petition for annulment of the arrest record at any time in accordance with the provisions of this section. ***Immediately upon court order issuing upon a finding of not guilty or when the case is dismissed or not prosecuted, the defendant may immediately file a petition for annulment of record. If this petition is filed immediately following an acquittal in court, the court shall inquire of the state if it has no objection. If it does not, the court may immediately act upon the petition for annulment of the record of arrest, immediately granting the same if the court deems it appropriate to do so.***

# Speakers

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 418 Date 2/4/2003

Committee CJ & PS

**** Please Print All Information ****

| Name | Address | Phone | Representing | Pro | Con |
|---|---|---|---|---|---|
| Claire Ebel | 18 Low Av Concord | 225-3080 | NHCLU | X | |
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# Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 418

**BILL TITLE:** **relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.**

**DATE:** **2/4/2003**

**LOB ROOM:** **204** **Time Public Hearing Called to Order:** _____

**Time Adjourned:** _____

(please circle if present)

**Committee Members:** Reps. Welch, Tholl, Flesh, Jones, Kennedy, K. Gilbert, Nedeau, Stevens, Weare, Bemis, Bicknell, Fish, Oliver, D. Smith, Winchell, Knowles, Callaghan, Movsesian, Berube, Pantelakos and T. Robertson.

**Bill Sponsors:** Rep. Derby

TESTIMONY

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

Rep. Mark Derby, sponsor, supporting
-submitted written information – Skinner case – just today from court

Question – Rep. Pantelakos – does need legal advice?
Question – Rep. Knowles – no charge $100.00, Sec. 9

Mike Iacopino, NH Assn. of Criminal Defense Lawyers, supporting
-explained annulment section
-time frame of asking for annulment

Rep. Knowles
-asked questions on time for receiving annulment

Ann Rice, NH Atty. General's office, testifying for information only
-"allows for prosecutors input"
-"may have a hearing: if ther is objection

Bob Miller, 44 Albin Rd., Bow, representing self
-annullment does not effect federal "rap" sheet – still appears

Hearing Closed at 2:35 p.m.

Respectfully submitted,

Stephen H. Nedeau

Rep. Stephen Nedeau,

# Sub-Committee Actions

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 418

**BILL TITLE:** **relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.**

DATE: 2-19-03

**Subcommittee Members:** Reps. KNOWLES, PANTELAKOS, STEVENS

**Comments and Recommendations:** AMEND LINE # 7

**Amendments:**

Sponsor: Rep. KNOWLES OLS Document #: 2003-05424 (Adopted)/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

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

Moved by Rep. KNOWLES

Seconded by Rep. PANTELAKOS

Vote: 3-0

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

Moved by Rep. _____

Seconded by Rep. _____

Vote: _____

Respectfully submitted,

Rep. Wm V Knowles

# Testimony

# State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

February 4, 2003

Hon. David A. Welch, Chair
House Committee on Criminal Justice and Public Safety
204 Legislative Office Building
Concord, NH 03301

**Re: HB418 Written Testimony of Sponsor**

Dear Chairman Welch and Committee Members:

Thank you for your thoughtful consideration of HB418. Please accept the following in supplementation of my oral testimony in support of the above-referenced bill:

**The problem:** criminal defendants whose cases resulted in a finding of not guilty, dismissal or by failure to prosecute will frequently need to have the record of the arrest annulled so that they may go on with their lives, apply for jobs, join the military, and so forth. Under current law (RSA 651:5), such not guilty defendants are required to go through the same comprehensive procedure to obtain an annulment of the arrest record as defendants who were found guilty and sentenced. This requires, among other things, the acquitted defendant to pay an attorney to file a *new lawsuit,* that is, a Petition for Annulment, pay a separate filing fee ($50.00, Superior Court Rule 169(D), District Court Rule 3.3), and wait for parties such as the Department of Corrections to say that it has no information about the defendant.

Depending upon how backed up the particular court is, it can take weeks for the preliminary paperwork to go off to the Department of Corrections, and then it can and does take months before the trial court will grant the Petition. I am given to understand that District Courts generally grant the petitions filed by not guilty defendants without a hearing, but the Superior Court generally requires the defendant to attend a separate hearing before granting the Petition.

**Proposed Solution:** Amend RSA 651:5, II so that in cases where a criminal defendant's case has concluded with a verdict of not guilty, dismissal or failure to prosecute, the defendant may move for annulment of the record of arrest, pre-trial imprisonment, etc. in the form of a *post-trial motion* "at any time". This includes a provision whereby the Court would ask the prosecution if it has any plans for filing an appeal, and permits the Court to immediately grant the annulment "if the court

deems it appropriate to do so." HB418 would also amend RSA 651:5, IX to empower the trial court the discretion to grant such a petition for annulment without ordering the petitioner to attend a separate hearing.

**Rationale:** criminal defendants who have had their cases end in findings of not guilty, dismissal or failure to prosecute are situated differently from defendants who have been convicted and sentenced. It makes little sense to require such *not guilty* defendants to incur the expense, time and trouble the State would require of a defendant who had been convicted and sentenced. The State, having failed to meet its burden of proof or having neglected to prosecute the defendant, does not have the same interest in ensuring that the annulment is in the best interests of the public, that the defendant has rehabilitated, and so forth. This is because there was never a finding of guilt, a conviction or a sentence. The need to file a whole new lawsuit for something that should be and usually is granted as a matter of course is a burden on the administrative staff of the Courts, and it is an undue burden on the criminal defendant who has had his or her case end in a finding of not guilty.

Thank you in advance for your kind attention to and consideration of HB418.

Very truly yours,



Mark S. Derby
State Representative, District 7:
Moultonborough, Tuftonboro
and Wolfeboro

MSD/nss

C:\Documents and Settings\default\My Documents\2003 Legisl Session Corresp\HB418 Written Testimony.wpd

## ADDENDUM

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**Potential grammar amendment:**

at line 15, insert a comma after "convictions" and pluralize "arrest" to be arrests". (see below)

This would make the new language match the present grammar of RSA 651:5, IX.

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Comparison of new and existing Section IX:

Existing Section IX:

When a petition for annulment is timely brought, the court shall require the department of corrections to report to the court concerning any state or federal convictions, arrests or prosecutions of the petitioner and any other information which the court believes may aid in making a determination on the petition. The department shall charge the petitioner a fee of $100 to cover the cost of such investigation unless the petitioner demonstrates that he is indigent or he has been found not guilty or his case has been dismissed or not prosecuted in accordance with paragraph II. The court shall provide a copy of the petition to the prosecutor of the underlying offense and permit them to be heard regarding the interest of justice in regard to the petition.

Section IX per HB418:

When a petition for annulment is timely brought seeking annulment of a record of conviction, the court shall require the department of corrections to make a report concerning any state or federal convictions, ~~of~~ arrests or prosecutions of the petitioner and any other information which the court believes may aid in making a determination on the petition. The department shall charge the petitioner a fee of $100 to cover the cost of such investigation, unless the petitioner demonstrates that he *or she* is indigent. The court shall provide a copy of the petition to the prosecutor of the underlying offense and permit the prosecutor to be heard concerning the interests of justice with regard to the petition. When a petition of annulment of a record of arrest is brought pursuant to paragraph II, the court shall not require the payment of the $100 fee to cover the cost of investigation. *The court, in its discretion, may order an investigation by the department of corrections and report concerning the same issues raised as if a record of conviction were being requested and the court may, in its discretion, taking into consideration any documents filed with the petition for annulment including a statement from the petitioner immediately upon entry of a petition to annul record of arrest, grant the same without further proceedings.*

# Voting Sheets

**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY**

**EXECUTIVE SESSION on HB 418**

**BILL TITLE:** **relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.**

**DATE:** March 18, 2003

**LOB ROOM:** 204

**Amendments:**

| | | | |
|---|---|---|---|
| Sponsor: Rep. Knowles | OLS Document #: | 2003 | 0542h |
| Sponsor: Rep. | OLS Document #: | | |
| Sponsor: Rep. | OLS Document #: | | |

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

Moved by Rep. Knowles AMENDMENT ONLY

Seconded by Rep. Pantelakos

Vote: 17-0 (Please attach record of roll call vote.)

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

Moved by Rep. Knowles

Seconded by Rep. Pantelakos

Vote: 17-0 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:** 17-0

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

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

**CRIMINAL JUSTICE AND PUBLIC SAFETY**

**Bill #:** HB 418 **Title:**

**PH Date:** / / **Exec Session Date:** 3/18/03

**Motion:** AMENDMENT **Amendment #:** 2003-0542h

| MEMBER | YEAS | NAYS |
|---|---|---|
| Welch. David A. Chairman | ✓ | |
| Tholl. John E. V Chairman | ✓ | |
| Fesh. Bob M | ✓ | |
| Jones. Constance A | ✓ | |
| Kennedy. Richard E | ✓ | |
| Gilbert. Karl I | | |
| Nedeau. Stephen H | ✓ | |
| Stevens. Stanley E | ✓ | |
| Weare. E Albert | ✓ | |
| Bemis. Alan B | ✓ | |
| Bicknell. Elbert I | ✓ | |
| Fish. Douglas K | | |
| Oliver. James H | ✓ | |
| Smith. Donald C | ✓ | |
| Winchell. George D | ✓ | |
| Knowles. William V | ✓ | |
| Berube. Roger R | | |
| Callaghan. Frank D | ✓ | |
| Movsesian. Lori A | | |
| Pantelakos. Laura C | ✓ | |
| Robertson. Timothy N | ✓ | |
| | 17 | 0 |

TOTAL VOTE:
Printed: 1/6/2003

**CRIMINAL JUSTICE AND PUBLIC SAFETY**

**Bill #:** HB 418 **Title:** _____

**PH Date:** ___/___/___ **Exec Session Date:** 3/18/03

**Motion:** OTP/A **Amendment #:** _____

| MEMBER | YEAS | NAYS |
|---|---|---|
| Welch. David A. Chairman | ✓ | |
| Tholl. John E. V Chairman | ✓ | |
| Fesh. Bob M | ✓ | |
| Jones. Constance A | ✓ | |
| Kennedy. Richard E | ✓ | |
| Gilbert. Karl I | | |
| Nedeau. Stephen H | ✓ | |
| Stevens. Stanley E | ✓ | |
| Weare. E Albert | ✓ | |
| Bemis. Alan B | ✓ | |
| Bicknell. Elbert I | ✓ | |
| Fish. Douglas K | | |
| Oliver. James H | ✓ | |
| Smith. Donald C | ✓ | |
| Winchell. George D | ✓ | |
| Knowles. William V | ✓ | |
| Berube. Roger R | | |
| Callaghan. Frank D | ✓ | |
| Movsesian. Lori A | | |
| Pantelakos. Laura C | ✓ | |
| Robertson. Timothy N | ✓ | |
| | 17 | 0 |

TOTAL VOTE:

Printed: 1/6/2003

# Committee Report

# COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 418**

TITLE: relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.

DATE: March 19, 2003 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)**

This legislation allows a defendant whose case was dismissed, not prosecuted, or such person was found not guilty, to file a petition for annulment of record immediately upon such determination. The court shall inquire of the state if it has no objection. If it does not, the court may immediately act upon the petition for annulment of the record of arrest immediately granting the same if the court deem it appropriate to do so.

Vote 17-0.

Rep. William V. Knowles
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Criminal Justice and Public Safety

**HB 418,** relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute. **OUGHT TO PASS WITH AMENDMENT**

Rep. William V. Knowles for Criminal Justice and Public Safety: This legislation allows a defendant whose case was dismissed, not prosecuted, or such person was found not guilty, to file a petition for annulment of record immediately upon such determination. The court shall inquire of the state if it has no objection. If it does not, the court may immediately act upon the petition for annulment of the record of arrest immediately granting the same if the court deem it appropriate to do so. **Vote 17-0.**