

Senate Judiciary Committee

Pete Mulvey 271-4063

SB 141-FN, extending the time to petition for a new trial in certain cases.

Hearing Date: February 4, 2025

Time Opened: 1:41 p.m.

Time Closed: 2:13 p.m.

Members of the Committee Present: Senators Gannon and Altschiller

Members of the Committee Absent : Senators Abbas, Carson and Reardon

Bill Analysis: This bill creates an exception to the 3-year timeframe to petition for a new trial.

Sponsors:

Sen. Gannon

Sen. Innis

Sen. Rochefort

Sen. Pearl

Sen. Rosenwald

Sen. Watters

Sen. Murphy

Rep. Weyler

Rep. L. Walsh

Rep. Scherr

Rep. Roy

Rep. Khan

Who supports the bill: 39 individuals signed in support of SB 141-FN. Contact Pete Mulvey (peter.mulvey@gc.nh.gov) for further detail.

Who opposes the bill: two individuals signed in opposition to SB 141-FN. Contact Pete Mulvey (peter.mulvey@gc.nh.gov) for further detail.

Who is neutral on the bill: N/A

Summary of testimony:

Senator Bill Gannon

Senate District 23

- Currently, the State of New Hampshire offers a three-year timeframe to petition for a new trial. Five other states imposed similar hard limits.
- SB 141 enables exemptions to the three-year window to consider new evidence or standards.
- If available, the case being petitioned will be considered and heard by the same judge as the initial trial.
- Any new evidence or rationale for retrial will be evaluated by a judge to reduce frivolous applications and a subsequent backlog.
- Sen. Altschiller asked Sen. Gannon to identify who requested SB 141.
 - Sen. Gannon said the Innocence Project requested the legislation.

- Sen. Altschiller asked Sen. Gannon to elaborate on what may be eligible for the petition and how SB 141's eligibility measures mitigate a potential deluge of retrial requests.
 - Sen. Gannon indicated that preexisting evidence may be reintroduced for review in accordance with modern science or techniques if appropriate, and or entirely novel evidence may be brought forward for petition.
 - Sen. Gannon maintained that judicial discretion in accordance with the specified standards would ensure retrials are exceptional and appropriate.

Paul Halvorsen and Steven Endres

Merrimack County Attorney's Office

- Mr. Endres and Mr. Halvorsen opposed SB 141.
- SB 141 was appreciable in concept, but objectionable in its language.
- SB 141 read similarly to SB 507 from 2024. SB 141 amended RSA 526 – which Mr. Endres suggested was relegated to civil matters and was unchanged since the 1840s.
- Paragraph one ought to be changed to say a motion for a new trial may be filed beyond three years, to specify that the statute of limitations is all that is being changed.
- Mr. Endres identified RSA 651-D as the post-conviction DNA statute; The RSA could be expanded to include other forms of scientific evidence for reconsideration.
- Mr. Endres indicated that the Merrimack County Attorney's suggestions were concurred by their counterparts in Grafton, Rockingham, Cheshire, Sullivan, Belknap, Carroll and Strafford Counties.
- Mr. Halvorsen expressed concern over collateral consequences being eligible for petition. Collateral consequences, namely firearm or voting restrictions, persisted for decades. Further, no standard for reevaluation was specified in paragraph II (c), meaning the statute was too open ended for Mr. Halvorsen.
- Governor Sununu vetoed SB 507 to avoid bogging down courts with frivolous applications. A more comprehensive bill relative to RSA 651-D was the preferred route among the county attorneys according to Mr. Halvorsen.
- Sen. Altschiller asked the Merrimack County Attorney's if they had statements of support from their counterparts in writing.
 - Mr. Halvorsen clarified that it had been a conversation among attorneys and expressed confidence that language was the issue, concept.
- Sen. Altschiller noted that SB 507 passed both bodies and asked Mr. Halvorsen if he would support similar legislation.
 - Mr. Halvorsen said he would not. RSA 526 had not changed since 1842. Chapter 651-D was the preferable citation and may yield better law.
- Sen. Altschiller suggested that the county attorneys provide or determine the language which would satisfy their concerns.
 - Mr. Halvorsen suggested that time and coordination was the issue and expressed support toward collaboration.

Cynthia Mousseau and Winnie Ye

New England Innocence Project

- Ms. Mousseau shared that she was a former public defender for the State of New Hampshire.

- The standards for retrial were defined in RSA 526:1. SB 141 left RSA 526:1 untouched.
- RSA 526:4 provided the three-year window amended by SB 141.
- Standards to determine whether evidence was credible or not, and considerations toward the nature of the trial in question were provided for in RSA 526:1 as written.
- 526-4 does not contemplate the criteria for granting a new trial.
- RSA 651-D was open ended regarding time limits yet was hamstrung by limitations in RSA 526:4.
- It took Ms. Mousseau almost three years to navigate the discovery portion of an ongoing exoneration effort and indicated that it could take up to 11 years for such an exoneration to come to fruition.
- Ms. Mousseau maintained that most post-conviction litigation was legally technical and unrelated to new evidence or standards and accordingly would not be eligible for petition under SB 141.
- Ms. M Mousseau assured the committee that RSA 526 was actively referred to in criminal court, regularly, despite its alleged antiquity.
- Ms. Yee emphasized that the Innocence Project took a thoughtful, tailored approach.
- Since 1989, there had been 3653 exonerations; totaling 32,000 years wrongfully served.
- The three-year deadline for retrial was practically unfeasible given the time required for new evidence to come to light and for the appropriate legal proceedings to take place.
- Misapplied forensics was the second leading cause of wrongful convictions in the United States.
- Similar reform efforts elsewhere had not resulted in a frivolous deluge of requests given that failed efforts typically impeded one's odds of parole in the future.

PM

Date Hearing Report completed: February 10, 2025