

Amendment to SB 141-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the time to petition for a new trial.

4

5 Amend the bill by replacing all after the enacting clause with the following:

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7 1 New Trials in Civil Cases. Amend the chapter heading of RSA 526 to read as follows:

8

**NEW TRIALS *IN CIVIL CASES***

9 2 New Trials; When Granted in Civil Cases. Amend RSA 526:1 to read as follows:

10 526:1 When Granted ***In Civil Cases. The provisions of this chapter shall apply to***  
11 ***requests for a new trial in civil cases only.*** A new trial may be granted in any case when  
12 through accident, mistake or misfortune justice has not been done and a further hearing would be  
13 equitable.

14 3 New Chapter; New Trials in Criminal Cases. Amend RSA by inserting after chapter 534 the  
15 following new chapter:

16

**CHAPTER 534-A**

17

**NEW TRIALS IN CRIMINAL CASES**

18 534-A:1 Petition to Set Aside Conviction; New Trial; Time Limit. A petition to set aside a  
19 conviction or for a new trial on any grounds that constitute a proper legal basis for granting such  
20 relief may be made no later than 3 years after the date the conviction was entered; provided,  
21 however, that if the petition is based on a claim that physical evidence should be subjected to new or  
22 additional forensic testing or is subject to new scientific understanding, or a claim of newly  
23 discovered or newly admissible evidence, the petition must satisfy the requirements of RSA 534-A:2,  
24 II and RSA 534-A:2, III, and the provisions of RSA 534-A:5 through RSA 534-A:11 shall apply to  
25 such petition.

26 534-A:2 Exception to Time Limit. The time limit specified in RSA 534-A:1 shall not apply to  
27 petitions to set aside a conviction or for a new trial that satisfy all of the following conditions:

28 I. The petitioner seeks a new trial in a criminal case that resulted in a conviction of a felony;

29 II. The petitioner is either incarcerated, subject to other terms of a sentence, or subject to  
30 collateral consequences of the sentence that impair the petitioner's ability to exercise a  
31 constitutional, statutory, or common law right or privilege available to other United States citizens;  
32 and

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1           III. The petition meets the requirements of either RSA 534-A:3 or RSA 534-A:4.

2           534-A:3 Additional Forensic Testing or New Scientific Understanding. To satisfy this section  
3 the petitioner shall, under penalty of perjury:

4           I. Assert that the petitioner is innocent of the crime of which the petitioner was convicted.

5           II. Explain how physical evidence that was introduced against the petitioner at trial or that  
6 would have been presented at trial had the petitioner not pleaded guilty can be subjected to new or  
7 additional forensic testing that was not reasonably available, despite due diligence, at the time the  
8 conviction was entered, or is subject to new scientific understanding that did not exist at the time  
9 the conviction was entered.

10          III. Explain the grounds for a reasonable belief that the new forensic testing or the new  
11 scientific understanding of the evidence, as described in paragraph II, in light of all the  
12 circumstances, will demonstrate that the petitioner did not commit the crime for which he or she  
13 was convicted.

14          534-A:4 Newly Discovered Evidence. To satisfy this section the petitioner shall, under penalty  
15 of perjury:

16          I. Assert that the petitioner is innocent of the crime of which the petitioner was convicted.

17          II. Specify relevant and material evidence that either was not reasonably known to or  
18 available to the petitioner, despite due diligence, at the time the conviction was entered, or was not  
19 admissible in evidence at the time the conviction was entered, but is now both available and  
20 admissible in evidence.

21          III. Explain the grounds for a reasonable belief that the evidence described in paragraph II,  
22 in light of all the circumstances, will demonstrate that the petitioner did not commit the crime for  
23 which he or she was convicted.

24          534-A:5 Notice to Prosecuting Authority; Discovery. The court shall notify the office of the  
25 attorney general, or the county attorney who prosecuted the case, of a petition made under this  
26 chapter, and shall afford an opportunity to respond. Upon receiving notice of a petition made  
27 pursuant to RSA 534-A:2, the attorney general, or county attorney who prosecuted the case, shall  
28 take such steps as are necessary to ensure that any evidence described in the petition or obtained in  
29 connection with the case or investigation is preserved pending the completion of proceedings under  
30 this chapter and shall inform the petitioner regarding the location and condition of evidence in their  
31 possession that was obtained in relation to the underlying case, regardless of whether it was  
32 introduced at trial. Items discoverable at trial under the New Hampshire rules of criminal  
33 procedure shall be made available to the petitioner.

34          534-A:6 Request for Additional Testing. With respect to a petition that seeks new or additional  
35 forensic testing of physical evidence, the court, after a hearing, shall order such testing upon finding  
36 that the petitioner has established each of the following factors by a preponderance of the evidence:

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1 I. The evidence to be tested was secured in relation to the investigation or prosecution that  
2 resulted in the petitioner's conviction or sentence, and is available and in a condition that would  
3 permit the testing that is requested in the petition.

4 II. The evidence to be tested has been subject to a chain of custody sufficient to establish  
5 that it has not been substituted, tampered with, replaced, or altered in any material aspect.

6 III. The evidence sought to be tested is relevant and material to the issue of the petitioner's  
7 guilt or innocence of the crime of which he or she was convicted.

8 IV. If the requested testing produces exculpatory results, the testing will constitute new,  
9 noncumulative material evidence that the petitioner did not commit the crime for which he or she  
10 was convicted.

11 V. The evidence sought to be tested was not previously tested using similar testing methods  
12 or the type of testing sought is capable of producing new or more informative results.

13 VI. If other forensic testing previously was done in connection with the case, the requested  
14 testing would provide results that are new or more informative and probative on a material issue  
15 and would have a reasonable probability of contradicting prior test results.

16 VII. The testing requested employs a method generally accepted within the relevant  
17 scientific community.

18 534-A:7 Procedure for Additional Testing. If the court grants the petition for testing, the court's  
19 order shall:

20 I. Identify the specific evidence to be tested and the testing methods to be used.

21 II. If the court ordered different testing than requested by the petitioner, the court shall  
22 explain why the different test was ordered.

23 III. Designate the New Hampshire state police forensic laboratory to conduct the test.  
24 However, the court, upon a showing of good cause, may order testing by another qualified laboratory  
25 or agency that conforms to quality assurance standards required by the Federal Bureau of  
26 Investigation or another nationally or internationally recognized accrediting organization. The  
27 laboratory shall give equal access to its personnel, opinions, conclusions, reports, and other  
28 documentation to the prosecuting attorney and the petitioner. Consumptive testing shall not occur  
29 except upon written permission by both the prosecutor and petitioner or by a specific order of the  
30 court.

31 534-A:8 Costs of Additional Testing. The cost of testing ordered under this chapter shall be paid  
32 by the petitioner unless the court has appointed counsel to represent a petitioner who is indigent  
33 and the court determines that, in the interests of justice, such costs should be paid by the state from  
34 funds appropriated for indigent defense pursuant to RSA 604-A.

35 534-A:9 Procedure Upon Results of Testing.

36 I. If the results of testing conducted under this chapter are unfavorable to the petitioner, the  
37 court shall dismiss the petition.

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1           II. In addition to any other substantive or procedural remedies provided by law, if the  
2 results of testing conducted under this chapter are favorable to the petitioner, the court shall order a  
3 hearing and thereafter, if the court finds by a preponderance of the evidence that, based upon the  
4 new test results, there is a reasonable probability the petitioner would not have been convicted, shall  
5 enter any order that serves the interests of justice, including an order vacating and setting aside the  
6 judgment, discharging the petitioner if the petitioner is in custody, resentencing the petitioner, or  
7 granting a new trial.

8           534-A:10 Procedure Upon Petition Asserting New Scientific Understanding. In the case of a  
9 petition that does not seek testing of physical evidence, but asserts that such evidence is subject to a  
10 new scientific understanding, the court, after hearing, shall enter an order granting a new trial if the  
11 court finds by a preponderance of the evidence:

12           I. That the new scientific understanding proffered represents a bona fide scientific theory  
13 that is accepted as valid in the relevant scientific community, as established through the testimony  
14 of one or more experts qualified to testify pursuant to New Hampshire rules of evidence 702 and 703;

15           II. That the new scientific understanding constitutes relevant, material, and non-cumulative  
16 evidence that would be admissible at a new trial;

17           III. That the scientific understanding was not known or reasonably available to the  
18 petitioner at the time the conviction was entered; and

19           IV. That evidence of the new scientific understanding is of such character that, had it been  
20 presented in the proceedings prior to the entry of the conviction, there is a reasonable probability the  
21 petitioner would not have been convicted.

22           534-A:11 Procedure Upon Petition Asserting Newly Discovered Evidence. In the case of a  
23 petition that does not seek testing of physical evidence or claim the existence of a new scientific  
24 understanding of such evidence, but asserts that there exists evidence that was not available or not  
25 admissible at the time the conviction was entered, the court, after hearing, shall enter an order for a  
26 new trial if the court finds by a preponderance of the evidence:

27           I. That the petitioner was not at fault for failing to discover the evidence prior to the entry of  
28 the conviction;

29           II. That the evidence is admissible, material to the merits, and non-cumulative; and

30           III. That the evidence is of such a character that, had it been presented in the proceedings  
31 prior to the entry of the conviction, there is a reasonable probability the petitioner would not have  
32 been convicted.

33           534-A:12 Construction. Nothing in this chapter shall be construed to prevent the court from  
34 dismissing without hearing a petition that fails to satisfy the requirements for obtaining relief under  
35 this chapter or that raises claims which are repetitive of ones that have previously be adjudicated.

36           4 Effective Date. This act shall take effect January 1, 2026.

2025-1654h

AMENDED ANALYSIS

This bill creates a new chapter governing a petition to set aside a criminal verdict or for a new criminal trial.