

CHAPTER 49
HB 270-FN - FINAL VERSION

9Apr2021... 1285EBA

2021 SESSION

21-0075
04/05

HOUSE BILL **270-FN**

AN ACT relative to post-conviction DNA testing.

SPONSORS: Rep. Conley, Straf. 13; Rep. Schapiro, Ches. 16; Rep. Moran, Hills. 34; Rep.
Cushing, Rock. 21

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill amends the statute governing post-conviction DNA testing procedures.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to post-conviction DNA testing.

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

1 49:1 Post-Conviction DNA Testing of Biological Material. Amend RSA 651-D:2 to read as
2 follows:

3 651-D:2 Post-Conviction DNA Testing of Biological Material.

4 I. A person in custody, *on probation or parole, or whose liberty is otherwise*
5 *restrained as a result of a conviction or adjudication as a delinquent* pursuant to the
6 judgment of the court may, *notwithstanding RSA 526:4*, at any time after conviction or
7 adjudication as a delinquent, petition the *superior* court *in the county of conviction* for forensic
8 DNA testing of any biological material. The petition shall, under penalty of perjury:

9 (a) Explain why the identity of the petitioner was or should have been a significant issue
10 during court proceedings notwithstanding the fact that the petitioner may have pled guilty or nolo
11 contendere, or made or is alleged to have made an incriminating statement or admission as to
12 identity.

13 (b) Explain why, in light of all the circumstances, the requested DNA testing will
14 exonerate the petitioner and demonstrate his or her innocence by proving that the petitioner has
15 been misidentified as the perpetrator of, or accomplice to, the crime for which the petitioner was
16 convicted.

17 (c) Make every reasonable attempt to identify [~~both~~] the evidence that should be tested
18 [~~and the specific type of DNA testing which is sought~~].

19 (d) Explain why the evidence sought to be tested by the petitioner was not previously
20 subjected to DNA testing, or explain how the evidence can be subjected to retesting with different
21 DNA techniques that provide a reasonable probability of reliable and probative results.

22 *I-a. If the superior court determines that an indigent petitioner has met the*
23 *requirements of paragraph I, it shall appoint counsel to represent such petitioner in any*
24 *further proceedings under this section.*

25 II. The court shall notify the office of the attorney general, or the county attorney who
26 prosecuted the case, of a petition made under this section and shall afford an opportunity to respond.
27 Upon receiving notice of a petition made under this section, the attorney general, or county attorney
28 who prosecuted the case, shall take such steps as are necessary to ensure that any remaining
29 biological material obtained in connection with the case or investigation is preserved pending the
30 completion of proceedings under this section *and shall inform the petitioner regarding the*

1 *location and condition of evidence in their possession that was obtained in relation to the*
2 *underlying case, regardless of whether it was introduced at trial. Items discoverable at*
3 *trial under the New Hampshire rules of criminal procedure shall be made available to the*
4 *petitioner.*

5 III. *After a hearing*, the court ~~[may]~~ **shall** order DNA testing pursuant to an application
6 made under this section upon finding that the petitioner has established each of the following factors
7 by ~~[clear and convincing]~~ **a preponderance of the** evidence:

8 (a) The evidence to be tested was secured in relation to the investigation or prosecution
9 that resulted in the petitioner's conviction or sentence, and is available and in a condition that would
10 permit the DNA testing that is requested in the motion.

11 (b) The evidence to be tested has been subject to a chain of custody sufficient to establish
12 it has not been substituted, tampered with, replaced, or altered in any material aspect.

13 (c) The evidence sought to be tested is material to the issue of the petitioner's identity as
14 the perpetrator of, or accomplice to, the crime.

15 (d) DNA results of the evidence sought to be tested would be material to the issue of the
16 petitioner's identity as the perpetrator of, or accomplice to, the crime that resulted in his or her
17 conviction or sentence.

18 (e) If the requested DNA testing produces exculpatory results, the testing will constitute
19 new, noncumulative material evidence that ~~[will exonerate the petitioner by establishing that he or~~
20 ~~she was misidentified as the perpetrator or accomplice to the crime]~~ **there is a reasonable**
21 **probability the petitioner would not have been convicted.**

22 (f) The evidence sought to be tested was not previously tested using DNA technology or
23 the ~~[technology requested was not available at the time of trial]~~ **type of testing sought is capable**
24 **of producing new or more informative results.**

25 (g) If DNA or other forensic testing previously was done in connection with the case, the
26 requested DNA test would provide results that are **new or** ~~[significantly]~~ more ~~[discriminating]~~
27 **informative** and probative on a material issue of identity, and would have a reasonable probability
28 of contradicting prior test results.

29 (h) The testing requested employs a method generally accepted within the relevant
30 scientific community.

31 ~~[(i) The motion is timely and not unreasonably delayed.]~~

32 IV. If the court grants the motion for DNA testing, the court's order shall:

33 (a) Identify the specific evidence to be tested and the DNA technology to be used.

34 (b) If the court ordered different testing than requested by the petitioner, the court shall
35 explain why the different test was ordered.

36 (c) Designate the New Hampshire state police forensic laboratory to conduct the test.
37 However, the court, upon a showing of good cause, may order testing by another laboratory or agency

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1 ~~[accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board~~
2 ~~(ASCLD/LAB) or the National Forensic Science Training Center]~~ ***that conforms to the current***
3 ***version of ISO/IEC 17025 requirements, the appropriate quality assurance standards***
4 ***required by the Federal Bureau of Investigation, and to forensic-specific requirements, and***
5 ***is accredited by an organization that is a signatory to the International Laboratory***
6 ***Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories, if***
7 requested by the petitioner. ***The laboratory shall give equal access to its personnel, opinions,***
8 ***conclusions, reports, and other documentation to the prosecuting attorney and the***
9 ***petitioner. Consumptive testing shall not occur except upon written permission by both the***
10 ***prosecutor and petitioner or by a specific order of the court.***

11 (d) [Repealed.]

12 V. The cost of DNA testing ordered under this section shall be paid by the petitioner, or by
13 the state, if the petitioner is indigent as determined by the court. ~~[The court may appoint counsel for~~
14 ~~an indigent petitioner under this section.]~~

15 VI.(a) If the results of DNA testing conducted under this section are unfavorable to the
16 petitioner, the court shall dismiss the application and in cases where the petitioner was convicted of
17 a sexual offense, the court shall forward the test results to the New Hampshire state prison, sex
18 offender program.

19 (b) In addition to any other substantive or procedural remedies provided by applicable
20 law, if the results of DNA testing conducted under this section are favorable to the petitioner, ***and***
21 ***notwithstanding RSA 526:4***, the court shall order a hearing and shall enter any order that serves
22 the interests of justice, including an order vacating and setting aside the judgment, discharging the
23 petitioner if the petitioner is in custody, resentencing the petitioner, or granting a new trial.

24 VII. Nothing in this chapter shall be construed to limit the circumstances under which a
25 person may obtain DNA testing or other post-conviction relief under any other provision of state or
26 federal law.

27 49:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 25, 2021
Effective Date: July 24, 2021

