

# Judiciary Committee JOINT FAVORABLE REPORT

**Bill No.:** SB-509

**Title:** AN ACT CONCERNING NEWLY DISCOVERED EVIDENCE.

**Vote Date:** 4/4/2018

**Vote Action:** Joint Favorable

**PH Date:** 3/28/2018

**File No.:** 615

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## **SPONSORS OF BILL:**

Judicial Committee

## **REASONS FOR BILL:**

The Innocence Project brought this bill concept to the attention of the Judiciary Committee. The Innocence Project submitted data in support of this bill because 80% of wrongfully convicted people prove their innocence with non-DNA evidence. Connecticut's current three year limit on filing a motion for a new trial is too short to allow for the amount of work that goes into proving a person's innocence. It can also take years for new research and studies to reveal major flaws with certain types of forensic evidence used to convict people.

Examples of evidence that no longer is accepted as valid:

- Hair comparisons- debunked in 2015
- Comparative bullet lead analysis- debunked in 2005
- Certain signs that were believed to indicate that arson was the cause of a fire- debunked in 1992

44 states have no limit on when new evidence may be introduced after conviction, or have a time limit with an exception if the evidence could not have been discovered with due diligence. SB 509 would create such an exception and bring Connecticut's policy in line with the majority of the country.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **State of Connecticut, Division of Criminal Justice:**

Recommends that the committee take no action on this bill. They propose that the subject of newly discovered evidence be included in the study of the promotion of efficiencies in the filing of habeas corpus matters that will be undertaken by the task force as proposed in HB 5407. They believe the concerns addressed in this bill could and would be addressed by this task force of which they are a member.

**State of Connecticut, Division of Public Defender Services, Office of the Chief Public Defender, Christine Perra Rapillo, Chief Public Defender:**

Supports the bill. As science advances, more types of non-DNA evidence are being debunked and found to have been based on flawed assumptions and incorrect methodologies. This new information can help expose wrongful convictions, and this bill would allow convicted people to be able to petition for a new trial based on scientific progress. It takes years for teams to gather the evidence needed to prove a wrongful conviction. The majority of the states do not have a three year statute of limitations for new, material evidence. Some states have limits with exceptions when the evidence could not have been discovered with due diligence at the time of the trial. Other states have a time limit that starts from the time the new evidence could have been known. The Division notes that none of these states have experienced a flood of petitions with these more liberal policies.

Under current policy, Connecticut courts have been unwilling to consider new evidence as a claim of constitutional error in habeas. The Division posits that this may not be the proper legal venue to present innocence claims based upon new non-DNA evidence. Since filing a petition for a writ of habeas corpus is the only avenue presently available, petitioners initiate numerous appeals and habeas filings in order to have the debunked evidence used in their conviction reviewed. SB 509 creates a process by which flawed evidence can be directly and quickly reviewed to determine whether the trial may have been unfairly affected by the use of such evidence. This bill will ensure the integrity of convictions and provide an avenue for innocent people to return to their families and community.

**NATURE AND SOURCES OF SUPPORT:**

**Senator Martin M. Looney, President Pro Tempore, 11<sup>th</sup> District:**

Supports the bill. This bill will keep Connecticut laws current with scientific advances by allowing a judge to grant a new trial based on forensic evidence not available at the time of the original trial which would likely have led to a different outcome. Judges can use the reports by the National Research Council (2009) and the President's Council of Advisors on Science and Technology (2016) as a guide for which types of forensic evidence are scientifically reliable. In the past decade, we have learned that many types of evidence used to convict people either lacked foundational validity or were applied subjectively including bite marks, ballistics, and hair comparisons. The FBI has stopped using hair comparisons since it is now known to be unreliable. This bill would allow a court to grant a new trial for a convicted person if a hair comparison was a key piece of evidence used to determine their guilt. Whether it is hair comparison or another type of evidence yet to be proven to be unreliable, Senator Looney fully supports this bill to allow wrongfully convicted people to seek justice.

**Connecticut Criminal Defense Lawyers Association, Jennifer Bourn, Executive Committee Member-at-Large:**

Supports the bill. Current statutes are too restrictive and inadequate to ensure the remedy of a wrongful conviction. Recent changes in forensic science have shed light on the inaccuracies of previous methods used to secure convictions. This bill will help combat wrongful convictions and promote confidence in the criminal justice system.

**ACLU-CT, David McGuire, Executive Director:**

Supports the bill. The bill would allow an exception to the current three-year limit so that someone could file a motion for a new trial based on newly discovered evidence. 44 other states already have such an exception or do not have any time limit at all. According to the Innocence Project, 80% of people who have their convictions overturned do so with non-DNA evidence. In addition, when science and/or technology advances prove that forensic evidence used to convict a person is faulty and inaccurate, a person must have the opportunity to challenge its use in their original trial.

**Green & Sklarz, LLC, Kenneth Rosenthal:**

Supports the bill. Mr. Rosenthal has over four decades of legal experience in the criminal justice system. He represented three of the eighteen Connecticut exonerees including Bobby Johnson and Alfred Swinton. He states that it often takes years to prove wrongful conviction. He cites the cases he worked on as examples of how long it took to prove his clients' innocence:

- Bobby Johnson: Arrested for murder in 2006. It was not until 2013 when reluctant witnesses finally came forward and evidence about the actual perpetrators were found in police files from an unrelated case that the steps to complete exoneration could be started.
- Murray Colton: Arrested for murder in 1988. In 1997, it was discovered that the eyewitness, whose testimony helped convict Colton, was actually involved in the murder.
- Alfred Swinton: It took 15 years and hundreds of hours of work by pro bono lawyers and volunteers to do the extensive research and work to compile the data needed to overturn his conviction.

Mr. Rosenthal urges the passage of this bill as his examples show that it often takes years to prove the innocence of wrongfully convicted individuals.

**NATURE AND SOURCES OF OPPOSITION:**

None expressed.

**Reported by: Tamara Morris**

**Date: April 25, 2018**