HB 481-FN - AS INTRODUCED

2023 SESSION

23-0576
04/05

HOUSE BILL ***481-FN***

AN ACT relative to arrest warrants and search warrants.

SPONSORS: Rep. Yokela, Rock. 32

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires that the state disclose any prior evidence used to obtain either an arrest warrant or a search warrant, and whether a prior arrest or search warrant was denied based on the evidence being submitted in requesting a new arrest or search warrant.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 481-FN - AS INTRODUCED

23-0576
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to arrest warrants and search warrants.

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

1 Search Warrants; Requisites of Warrant. Amend RSA 595-A:2 to read as follows:

595-A:2 Requisites of Warrant.

I. Search warrants shall designate or describe the person, building, vessel, or vehicle to be searched and shall particularly describe the property or articles to be searched for. They shall be substantially in the form prescribed in RSA 595-A:3 and shall be directed to a sheriff or [~~his~~] ***a sheriff's*** deputy or to a constable or police officer, commanding him ***or her*** to search in the daytime, or if the warrant so directs, in the nighttime, the person, building, vessel, or vehicle where the property or articles for which he ***or she*** is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before any circuit or superior court named therein.

II. The law enforcement officer or law enforcement agency requesting the search warrant shall disclose any exculpatory evidence, whether they have knowledge of any prior request for a search warrant involving the person, building, vessel, or vehicle which is the subject of the pending request, and whether the pending request is based on any of the same evidence of any prior request. If the pending request is based on any of the same evidence as a prior request, the officer or agency shall include the date or dates of such prior request, the name of the judge or justice of the peace that reviewed it, the particular evidence submitted, and whether or not a search warrant was granted based on such evidence.

III. The state shall disclose whether they know of any other prior requests for a search warrant for the same individual using any of the evidence being submitted for consideration for the pending warrant request or any other exculpatory evidence for the charge when presenting to a grand jury.

IV. Any person who violates the provisions of paragraph II or III shall be subject to a fine of up to $1,000 for each violation.

2 Jurisdiction and Procedure Generally; Warrants. Amend RSA 592-A:8 to read as follows:

592-A:8 Warrants.

I. A justice of the peace or justice of the circuit court, upon such complaint when signed under oath, may issue a warrant for the arrest of the person so charged with an offense committed or triable in the county, directed to the sheriff of any county or his deputy or to any constable or police officer of any town in the county.

II. The law enforcement officer or law enforcement agency requesting the arrest warrant shall disclose exculpatory evidence, whether they have knowledge of any prior request for a arrest warrant involving the person, building, vessel, or vehicle which is the subject of the pending request, and whether the pending request is based on any of the same evidence any prior request. If the pending request is based on any of the same evidence as a prior request, the officer or agency shall include the date or dates of such prior request, the name of the judge or justice of the peace that reviewed it, the particular evidence submitted, and whether or not an arrest warrant was granted based on such evidence.

III. The state shall disclose whether they know of any other prior requests for an arrest warrant for the same individual using any of the evidence being submitted for consideration for the pending warrant request or any other exculpatory evidence for the charge when presenting to a grand jury.

IV. Any person who violates the provisions of paragraph II or III shall be subject to a fine of up to $1,000 for each violation.

3 Effective Date. This act shall take effect January 1, 2024.

LBA
23-0576
Revised 1/9/23

HB 481-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to arrest warrants and search warrants.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill requires that the state disclose any prior evidence used to obtain either an arrest warrant or a search warrant, and whether a prior arrest or search warrant was denied based on the evidence being submitted in requesting a new arrest or search warrant.

The Municipal Association assumes the intent of the bill is to discourage "judge shopping" by putting judges on notice where issuance of a warrant was denied by another judge based on the same evidence. Any prosecuting attorney engaging in such activity would be subject to a fine. The Association indicates it is unlikely that the activity targeted by the legislation occurs with any real frequency, and therefore the financial impact is likely to be de minimus. It is possible, however, that litigation will occur over the meaning of the phrase "if they have knowledge" which may or may not put a temporal context to that phrase. If such a temporal context exists, which would likely reflect the existing legal rule that any actor for the state is presumed to have knowledge of anything that any actor of the state does, it is possible that local law enforcement will be obligated to create and maintain records relative to who, where, and what was previously subject to a search warrant and, therefore, additional expenses may be incurred at the local level.

The Judicial Branch does not expect the requirements of this bill will have a significant fiscal impact on the Branch. This bill would require that at the time law enforcement requests a search warrant, the officer must also disclose any prior requests for search warrants regarding the subject of the warrant request and whether the new request is based on the same evidence as a prior request. Any person who violates the new requirements would be subject to a $1,000 fine. Similar requirements would apply to an arrest warrant requested by the State. The Branch does not expect that the new requirements described in this bill would significantly modify the Branch's current practices and would not have a substantial fiscal impact on the Branch.

The Department of Safety assumes this bill is intended to ensure documentation of attempts to obtain a search warrant in the affidavit for a new warrant. The Department indicates this could increase costs to Division of State Police if more documentation is needed, and therefore more time is needed, to write an affidavit. The bill also includes a fine for those failing to adhere to the bills requirements. The Department assumes an inadvertent error on behalf of the author of an affidavit could cost the state money in the form of a fine. The Department states potential costs to the Department are indeterminable.

The New Hampshire Association of Counties does not expect any impact on county revenue or expenditures from this bill.

AGENCIES CONTACTED:

Department of Safety, Judicial Branch, New Hampshire Municipal Association and New Hampshire Association of Counties

CONSENT CALENDAR

February 24, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Criminal Justice and Public Safety to which was referred HB 481-FN,

AN ACT relative to arrest warrants and search warrants. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Jason Janvrin

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Criminal Justice and Public Safety**
Bill Number:	**HB 481-FN**
Title:	**relative to arrest warrants and search warrants.**
Date:	**February 24, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The committee heard testimony that there was a possibility that law enforcement could be "justice shopping" for arrest and search warrants. No evidence that this is occurring was presented.
The majority of the committee believes that warrant applications can be denied for a number of reasons. In the case of lack of probable cause, law enforcement could gather more evidence and reapply having met the threshold of probable cause. In some cases this may be before a different justice due to their availability. There is also a requirement that a justice or justice of the peace must be neutral and detached from the matter before them. As such, they are required to recuse themselves from the matter which requires law enforcement to seek another justice or justice of the peace. Requiring a law enforcement officer to notify every justice of every attempt at obtaining a warrant to every justice or justice of the peace they utilize to finally obtain a warrant has the potential for the officer to interject speculation and hearsay as to why a previous warrant application was denied. Therefore, a majority of the committee recommends the bill be found inexpedient to legislate.

Vote 19-1.

Rep. Jason Janvrin
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 481-FN, relative to arrest warrants and search warrants. **INEXPEDIENT TO LEGISLATE.** Rep. Jason Janvrin for Criminal Justice and Public Safety. The committee heard testimony that there was a possibility that law enforcement could be "justice shopping" for arrest and search warrants. No evidence that this is occurring was presented.

The majority of the committee believes that warrant applications can be denied for a number of reasons. In the case of lack of probable cause, law enforcement could gather more evidence and reapply having met the threshold of probable cause. In some cases this may be before a different justice due to their availability. There is also a requirement that a justice or justice of the peace must be neutral and detached from the matter before them. As such, they are required to recuse themselves from the matter which requires law enforcement to seek another justice or justice of the peace. Requiring a law enforcement officer to notify every justice of every attempt at obtaining a warrant to every justice or justice of the peace they utilize to finally obtain a warrant has the potential for the officer to interject speculation and hearsay as to why a previous warrant application was denied. Therefore, a majority of the committee recommends the bill be found inexpedient to legislate. **Vote 19-1.**

Original: House Clerk
Cc: Committee Bill File

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB 481-FN Date: 2/9/23

Committee: Criminal Justice and Public Safety

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

Name	Address	Phone	Representing	Pro	Con
Dep Ellen Read			Rock 10	X	
Rep Alvin See			Merrimack -26	✓	
Rep Cyril Aures			" - 13	X	
Kate Keegan			NH Assn of Counties		X
Rep JR Hull			Hill 27	X	
Rep Josh Yokela			Rock 13	X	
John Bryfonski Chief BEDFORD PD		603-657-8826	NH Chiefs		X
Charles Reynolds - Dover PD (Ret)			Self		X
Joseph Ebert	33 Hazen Dr.	603 419 8242	NH State Police		

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 481-FN

BILL TITLE: **relative to arrest warrants and search warrants.**

DATE: **February 9, 2023**

LOB ROOM: **202-204** **Time Public Hearing Called to Order:** **1:30 p.m.**

Time Adjourned: **2:11 p.m.**

Committee Members: Reps. Roy, Rhodes, A. Murray, Pratt, Sytek, Proulx, Janvrin, D. Mannion, Reid, Stone, Tenczar, Harriott-Gathright, Meuse, Bouldin, Bradley, N. Murphy, R. Newman, Newell, Selig and Wheeler

Bill Sponsors:
Rep. Yokela

TESTIMONY

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

Representative Josh Yokela introduces his bill

- Makes the process and restrictions clearer for obtaining warrants. Rectifies "judge shopping", preventing officers from going from judge to judge to get the warrant they want based on the same evidence. If request a second time, would need to inform the judge that it was previously denied by another judge.
- Rep Proulx asks how often that happens, Rep Yokela says he doesn't have the statistics but knows that it has happened at least once
- Rep Newman asks if the first request has to be adjudicated and denied before the second request is made, Rep Yokela says he is not sure that a request would be made multiple times to multiple judges at the same time. This legislation likely wouldn't prevent that from happening, if it does.
- Vice Chair Rhodes asks about the fine and who is obligated to pay that fine, Rep Yokela says LEO or agency who violated this law with the second request would be responsible for the fine
- Rep Newell asks about the liability being entirely on the officer when the judicial branch and agencies are all involved in that as well, Rep Yokela says the officer could make it happen
- Rep Mannion asks for more specifics on the one case Rep Yokela mentioned earlier to better understand what the issue is
- Rep Janvrin justices of the peace can also execute warrants so how would you police that, Rep Yokela says that whoever it is requested from the requirement is the same. Rep Janvrin asks how would you even know they went to multiple justices of the peace

who aren't working on the same electronic records, Rep Yokela says it probably wouldn't be apparent and would only become known through investigation

Jason Smith, Captain of Salem PD, representing NHPA

- Opposes the bill
- This bill is attempting to solve a problem that does not exist in this state. Every warrant is done by one officer, not an agency or a team of officers. The definition of exculpatory evidence does not exist in RSA code. We can't punish our officers on a subjective issue. The Brady Rule already requires police to record and put forward any exculpatory evidence. There are also no provisions in this statute for an emergency. Who determines what a violation is? Is there

Chris Rice

- Supports the bill
- Is a justice of the peace
- Lays the framework for honest policing. Shares that he has in his experience has turned down several warrants and the requesting officer said to him well I'll just go down the street and ask the justice of the peace at they next police station. Exculpatory evidence in this bill refers to the previous request for a warrant, not any other evidence.
- Rep Newman asks how a violation could be determined, Rice says because there is no central system it would be difficult to do so
- Rep Newell asks if there was an accountability in the previous situations he's encountered, Rice says no

Rick Clark, Esq.

- Supports the bill
- Practiced criminal law for the past 15 years
- This bill is just proposing transparency. Shares his own experience of a police department circumventing a district court's decision to not authorize an arrest warrant because of lack of evidence, and they instead indicted him through a grand jury.

Respectfully submitted,

Rep. Alissandra Murray, Clerk

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB481 on 2023-02-09

Support: 7 Oppose: 0 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	Signed Up
Howland, Curtis	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	No	2/6/2023 11:05 AM
Rogers, Mary	Winchester, NH tiplady2001@yahoo.com	A Member of the Public	Myself	Support	No	No	2/6/2023 4:03 PM
Medeiros, Jesse	Plainfield, NH bgtrck458@gmail.com	A Member of the Public	Myself	Support	No	No	2/7/2023 9:02 AM
Wikstrom, Kathleen	Exeter, NH kjwikstrom@gmail.com	A Member of the Public	Myself	Support	No	No	2/7/2023 12:10 PM
Karney, Stephen	Amherst, NH stephenakarney@gmail.com	A Member of the Public	Myself	Support	No	No	2/7/2023 12:27 PM
Introcaso, Paul	Nashua, NH p.introcaso@comcast.net	A Member of the Public	Myself	Support	No	No	2/9/2023 10:24 AM
Alleman, Bill	Weare, NH gencourt@allemanse.com	A Member of the Public	Myself	Support	No	No	2/9/2023 1:59 PM

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 481-FN

BILL TITLE: relative to arrest warrants and search warrants.

DATE: February 24, 2023

LOB ROOM: 202-204

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Janvrin Seconded by Rep. Proulx Vote: 19-1

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Alissandra Murray, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 9:55:43 AM
Roll Call Committee Registers Report

2023 SESSION

Criminal Justice and Public Safety

Bill #: 481-FN **Motion:** ITL **AM #:** _____ **Exec Session Date:** 2/24/23

Members	YEAS	Nays	NV
Roy, Terry Chairman	19		
Rhodes, Jennifer M. Vice Chairman	1		
Pratt, Kevin M.	2		
Sytek, John	3		
Proulx, Mark L.	4		
Janvrin, Jason A.	5		
Mannion, Dennis	6		
Reid, Karen A	7		
Stone, Jonathan F.	8		
Tenczar, Jeffrey	9		
Harriott-Gathright, Linda C.	10		
Meuse, David	11		
Bouldin, Amanda C.	12		
Bradley, Amy Clerk	13		
Murphy, Nancy A.	14		
Newman, Ray E.	15		
Murray, Alissandra		1	
Newell, Jodi K	16		
Selig, Loren	17		
Wheeler, Jonah O	18		
TOTAL VOTE:	19	1	