

Senate Judiciary Committee

Pete Mulvey 271-4063

HB 162-FN, relative to informed consent for law enforcement searches of houses or other property.

Hearing Date: April 1, 2025

Time Opened: 2:04 p.m.

Time Closed: 3:01 p.m.

Members of the Committee Present: Senators Gannon, Abbas, McConkey and Altschiller

Members of the Committee Absent : Senator Reardon

Bill Analysis: This bill expands the informed consent law to include houses and other property. This bill further modifies the requirements governing what a law enforcement officer must inform a person prior to obtaining consent for a search as well as any applicable exceptions.

Sponsors:

Rep. Roy

Rep. Scherr

Who supports the bill: 10 individuals signed in support of HB 162-FN. Contact peter.mulvey@gc.nh.gov for further details.

Who opposes the bill: 5 individuals signed in opposition to HB 162-FN. Contact peter.mulvey@gc.nh.gov for further details.

Who is neutral on the bill: N/A.

Summary of testimony:

Representative Buzz Scherr

Rockingham- District 26

- Representative Scherr explained that he is the cosponsor of HB 162 speaking for the prime sponsor, Representative Terry Roy.
 - It is a follow up for a bill that he backed, along with other members of the house, several years ago.
- He stated that the original bill required that an officer needed to get written consent to search a vehicle.
 - He further stated that he is a former police commissioner for the City of Portsmouth, and that from his experience, the written consent seemed to work well.
- Representative Scherr argued that it doesn't make sense to necessitate consent searches of cars but not homes which are much more private in nature.

- He noted that the bill only pertains to consent searches, it does not change the law relative to other warrantless searches or exigent circumstances.
 - The bill simply makes it so searches of homes must be consented to and the owner is informed of their rights.
- He explained that the bill would simply expand informed consent law to cover homes and other property in addition to cars and it is not a heavy lift for police departments to comply with.
- Representative Scherr explained that the bill is slightly more than what is constitutionally required to conduct searches; however, he noted that it makes sense as it can be very intimidating for individuals in the event that an officer was to show up at someone's home and ask permission to conduct a search.
 - The bill does not limit law enforcement from searches, it merely allows individuals to be informed of their rights and lets them know what is going on.
- He reiterated that there have been no problems with the consent laws pertaining to vehicle searches.
- Senator Gannon asked if there were cases where officers have pushed to search a home.
- Representative Scherr stated there have been cases of litigation that have arisen regarding whether consent was given under duress.
 - This bill makes that litigation less likely to occur by having a form to sign for consent that explicitly states that a refusal cannot be used against an individual.
- Senator Abbas asked what impact this would have on policy regarding no-knock laws.
- Representative Scherr explained that if law enforcement officials had a warrant for a no-knock search, this would not have any effect at all.
- Senator Abbas noted that he believes there is a difference between a motor vehicle search and a home search in that a motor vehicle stop is a seizure in itself, whereas a person has the right not to answer the door when at home and is not under a seizure.
 - He asked, then, how this would apply to a home given that individuals are not under duress.
- Representative Scherr explained that for car searches, the issue arose where individuals were feeling pressure to consent to searches that were not substantive to the reason they were being stopped.
 - He noted that it is different when the police go to a home, but often they go in wanting to talk with someone in the home and they potentially intimidate a different member of the home into providing consent simply by their presence.
- He explained that the bill merely seeks to give people an understanding of their rights in those circumstances.
- Senator Altschiller sought clarity as to whether the bill would require a law enforcement officer to expressly outline an individual's right to refusal of a search and their right to not have that refusal used against them later.
- Rep Scherr stated that is correct.
- Senator Altschiller noted that a police presence on someone's doorstep alludes to an adversarial relationship and asked what exactly this bill is addressing.
- Representative Scherr stated that the original bill sought to address concerns pertaining to motor vehicle stops that progressed into investigations outside of the purview of the initial stop.
- He agreed that a police presence on someone's door makes the relationship feel adversarial by nature.
 - He noted that police officers don't intend to intimidate simply by their presence, but their presence is intimidating, nonetheless.
 - This simply gives people a little more information of what is going on as to their rights pertaining to consent of searches.
- Senator Abbas asked if the police were at someone's house to search, wouldn't the person ask why they wanted to search the home.
- Representative Scherr replied that it is likely.
- Senator Abbas wondered if by law enforcement asking for consent, individuals would understand their right to consent or refusal.

- Representative Scherr replied that he was not sure if he understood the question, but that attempting to get consent was good practice and if an individual refused, law enforcement could simply gather evidence in order to request a search warrant.
 - This bill would simply make sure that whoever is consenting has an understanding of what is at stake.
- Senator Altschiller asked about the language on lines 18 through 21 and how the determination is made as to what a significant period of time is.
- Representative Scherr stated that the language is to make sure there is a significant break in time between consent requests so that police can't return 15 minutes after a refusal to ask for consent again.
 - He relayed a story about a case where a man refused a search and left the home and was arrested for the crime he was suspected of.
 - The police went back to the home and asked the man's wife if they could then conduct a search and she allowed it.
 - There are a number of cases where there is a concern of law enforcement repeatedly asking for consent to search while individuals are under pressure.
- Senator Altschiller asked about language on line 20 regarding a new set of circumstances and if there has to be a change to justify law enforcement going back.
- Representative Scherr confirmed that there does need to be a change.
- Senator Altschiller asked how the language on lines 5 and 6 referring to any other property would apply to landlords and tenants.
- Representative Scherr explained as a general proposition, it refers to the 4th amendment.
 - Landlords do not have the right to consent to a search on a tenant's rental.
 - He noted that any other property was meant to address things such as barns, garages, sheds, or any other property someone owns.

Attorney Steven Endres

Assistant Merrimack County Attorney

- Mr. Endres noted that he has been an attorney for over 20 years and he opposes HB 162.
- He explained that in New Hampshire all searches must be conducted through a warrant or an exception.
 - Under current case law there is nothing that requires law enforcement to inform people of rights to refusal.
 - These are not new concepts.
- Mr. Endres referred to a case in 1979 in which a woman had been abused and law enforcement sought an interview with the man she suspected of committing the crime.
 - Police did a knock and talk where they asked him to talk to speak to them.
 - He agreed and let them into his home where they noticed suspicious articles and arrested him.
- Mr. Endres explained that under the requirements of this bill, the police would have had to get written consent to search which could have impeded their ability to arrest him.
- Mr. Endres noted a similar investigation of child sex abuse images in which this bill would have forced law enforcement to inform a suspect of his rights regarding consent prior to a search of his computer rather than simply gaining verbal consent.
- He argued that the language in this bill is clunky.
- Mr. Endres pointed to a sample of a vehicle consent to search form that he brought in from the Merrimack County District Attorney's office.
 - He noted that one side shows what an individual has to be informed of in vehicle searches under the current law and the other side shows what would be required under HB 162.
 - He argued that what the individual must be informed of is confusing to say the least.
- Mr. Endres allowed that a written form is the best practice, but not always practical.
- He related a case of a juvenile being investigated for marijuana use in a car in which the owner of the car, the mother of one of the juvenile's, provided consent for the car to be searched.

- He noted that the mother can't actually consent to the search because under RSA 595-A:10, the driver of the vehicle has to give consent.
- He argued that it is inaccurate to say that the current informed consent law has been no problem.
- Mr. Endres addressed a case in which someone was accused of taking pictures of another person in a dressing room in which the police asked the suspect to search their cell phone.
 - Under this bill, verbal consent would not be sufficient and they would have to first get written consent and inform them of their rights to refusal prior to the search.
- Another concern, according to Mr. Endres, is a penalty provision under this statute that actually goes further than the penalty for a constitutional violation.
- Senator Gannon asked why the consent would have to take place at the threshold of a home.
- Mr. Endres stated that if you invite a police officer into your home, you are consenting to a search simply by allowing them into your home.
 - Under this bill, they would need to complete a written consent form first.
- Senator Abbas asked about consent and what it allows law enforcement to search compared to a warrant being specifically tailored to a certain area.
- Mr. Endres stated that consent searches are more expansive than those done with a warrant.
 - Unlike warrant searches, with consent an individual has a right to withdraw their consent at all times.

Lieutenant Derek Cataldo

NH Association of Chiefs of Police

- Lieutenant Cataldo stated that the Association of Chiefs of Police opposes HB 162.
- He explained that their opposition pertains to the way the bill expands informed consent to all properties such as bags, cell phones, etc.
- He noted that the drug problem is a major concern in Manchester and officers often see people put paraphernalia in bags or jackets.
 - Under current law, officers approach suspects and ask for verbal consent to search the person and their property.
 - Under HB 162, he explained, that interaction would now require a form.
- Lieutenant Cataldo argued that the longer someone is given to run or discard what is sought, it becomes an officer safety issue.
- He believed that many officers would forgo the written consent and seize the property and go through the steps to apply for a search warrant.
- Lieutenant Cataldo also explained that an additional concern was the way in which the bill would tie up officers at a number of standard calls for service.
 - It would require a signed form for almost any entry to a home regardless of the nature of the call.
 - Every interaction with an officer would require a form to be signed which, he argued, is unrealistic.
- He noted that undercover operations would be inhibited by this bill as well.
 - This bill would stop undercover operations in the State of New Hampshire because all interactions that involved entry into private property would first require a consent form to be filled out.
- Lieutenant Cataldo stated that the bill would be a general administrative burden to law enforcement which could discourage officers from performing their duty.
- He concluded that this bill is a major expansion of the current informed consent law focusing on motor vehicles and would impact thousands of officer interactions per day.
 - It would require major litigation to determine how this law would play out.
- Senator Altschiller noted that the language of the bill does provide for scenarios in which officers don't need to complete the written form and asked if every knock and talk instance involved entry into the home.
- Lieutenant Cataldo stated that it is dependent on the call, but he argued that officers will start to err on the side of exigencies being stretched.

- He noted that interactions could be easily resolved with verbal consent as opposed to formal, written consent.
- Senator Altschiller asked if this bill could be useful in cases where officers are called to a home for something that is not relevant to a search but end up seeing items that raise an alarm bell.
- Lieutenant Cataldo stated that he believes that is a realistic scenario.
- Senator Gannon asked how it would play out if a suspicious item is seen in a simple wellness check.
- Lieutenant Cataldo stated that generally verbal consent is enough to cover officers in situations pertaining to wellness checks, but almost all actual searches of homes are done with warrants.
- Senator Gannon asked if seeing a bloody glove would be enough of an exigent circumstance to not need a warrant.
- Lieutenant Cataldo explained that officers would use safety as the exigent circumstance, but he noted that warrants are the cleanest, safest ways to conduct searches.

Major Bill Bright

New Hampshire State Police

- Major Bright explained that the State Police see this bill as potentially problematic.
- He noted that the intention of the bill focuses on homes, but the bill would complicate interactions pertaining to other items of ownership.
- He suggested amending the language of the bill if the intention was not to require written consent to search any items of ownership from backpacks to pants pockets.
- Major Bright argued that the language of the bill as written will complicate regular interactions in non-investigative scenarios.
- He stated that the language of the bill makes it necessary to obtain either written consent, or consent obtained from video recording.
- He noted that when any property is in play, police may not have the necessary forms, or body cams on them to verify consent, but they may still be able to verbally obtain it.
- Major Bright argued that defense attorneys are going to think that every search, whether written or not, will be reason to challenge.

PM

Date Hearing Report completed: April 3, 2025