
Committee Report

CONSENT CALENDAR

April 11, 2018

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred

SB 493,

**AN ACT establishing a committee to study the
codification of the exculpatory evidence schedule and
related law enforcement protocols. Having considered
the same, report the same with the following
amendment, and the recommendation that the bill
OUGHT TO PASS WITH AMENDMENT.**

Rep. Paul Berch

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	SB 493
Title:	establishing a committee to study the codification of the exculpatory evidence schedule and related law enforcement protocols.
Date:	April 11, 2018
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2018-1171h

STATEMENT OF INTENT

This bill, as amended, clarifies the duties of the prosecutors, law enforcement officers and courts regarding the obligation to provide exculpatory evidence, while conforming New Hampshire law with the requirements of the United States and New Hampshire Constitutions. It provides clear definitions, protects confidentiality to the extent allowed by law, and protects law enforcement officers from improper discharge.

Vote 16-1.

Rep. Paul Berch
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

SB 493, establishing a committee to study the codification of the exculpatory evidence schedule and related law enforcement protocols. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Paul Berch for Judiciary. This bill, as amended, clarifies the duties of the prosecutors, law enforcement officers and courts regarding the obligation to provide exculpatory evidence, while conforming New Hampshire law with the requirements of the United States and New Hampshire Constitutions. It provides clear definitions, protects confidentiality to the extent allowed by law, and protects law enforcement officers from improper discharge. **Vote 16-1.**

Original: House Clerk

Cc: Committee Bill File

COMMITTEE REPORT

majority #1
CC

COMMITTEE: Judiciary

BILL NUMBER: SB 493

TITLE: Establishing a committee to study the codification of the exculpatory evidence schedule and related law enforcement protocols.

DATE: 4-11-18

CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
2018-1171h

SB 493, as amended MAJORITY BLURB

OTP/A Amendment 1171h

Committee Vote 16-1 (consent calendar)

This bill, as amended, clarifies the duties of the prosecutors, law enforcement officers and courts regarding the obligation to provide exculpatory evidence, while conforming New Hampshire law with the requirements of the U.S. and N.H. Constitutions. It provides clear definitions, protects confidentiality to the extent allowed by law, and protects law enforcement officers from improper discharge.

Rep. Paul Berch for the Judiciary Committee

Paul Berch
4/12/18

COMMITTEE VOTE: 16-1

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Paul Berch
For the Committee



Amendment to SB 493

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

2

3 AN ACT relative to procedures for determining and disclosing exculpatory evidence in a
4 police officer's personnel file.

5

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

7

8 1 New Subdivision; Police Officers; Disclosure of Exculpatory Evidence; Termination
9 Prohibited. Amend RSA 105 by inserting after section 13-c the following new subdivision:

10 Disclosure of Exculpatory Evidence

11 105:13-d Disclosure of Exculpatory Evidence.

12 I. In this subdivision:

13 (a) "Exculpatory evidence" means any information required to be disclosed to the
14 defendant in a criminal case under the federal constitution or the state constitution.

15 (b) "Personnel file" includes all employment records and any related internal affairs
16 investigations.

17 II. The prosecutor shall have access to the complete personnel file of any police officer who
18 may be a witness for either party in any criminal case for the purpose of determining the existence
19 of potentially exculpatory evidence. If the prosecutor cannot determine whether such evidence is
20 exculpatory, he or she shall petition the court for an in camera review of the evidence. No
21 prosecutor who reviews a police officer's personnel file shall disclose any information obtained as a
22 result of the review, except as required in this paragraph or to the extent necessary to comply with
23 the federal constitution or state constitution. The personnel file shall remain confidential unless
24 otherwise provided by law.

25 III. When the head of a law enforcement agency determines that a police officer's personnel
26 file may contain potentially exculpatory evidence, he or she shall notify the police officer of that
27 determination. The police officer shall have the opportunity to challenge the disciplinary finding or
28 other administrative action resulting from the potentially exculpatory evidence through available
29 contractual, administrative, and legal means. However, the pendency of such challenge shall not
30 prevent the disclosure of the potentially exculpatory evidence in a criminal proceeding in which an
31 officer is a potential witness.

32 IV. The duty to disclose exculpatory evidence that should have been disclosed prior to trial
33 shall be an ongoing duty that extends beyond a finding of guilt.



Amendment to SB 493

- Page 2 -

1 105:13-e Termination Prohibited. No police officer shall have his or her employment
2 terminated based solely on a determination that the officer has potentially exculpatory evidence in
3 his or her personnel file which may need to be disclosed to a criminal defendant. Nothing in this
4 section shall prohibit the employing authority from terminating a police officer's employment based
5 on conduct that is the subject of the exculpatory evidence.

6 2 Repeal. RSA 105:13-b, relative to confidentiality of police personnel files, is repealed.

7 3 Effective Date. This act shall take effect 60 days after its passage.



2018-1171h

AMENDED ANALYSIS

This bill requires a determination of whether information in a police officer's personnel file constitutes exculpatory evidence and allows a police officer who has information determined to be exculpatory evidence in his or her personnel file to have an opportunity to challenge the disciplinary finding.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 493

BILL TITLE: establishing a committee to study the codification of the exculpatory evidence schedule and related law enforcement protocols.

DATE: 4/11/18

LOB ROOM: 208

MOTION: (Please check one box)

OTP ITL Retain (1st year) Adoption of Amendment # 1171h (if offered) Interim Study (2nd year)

Moved by Rep. BERCH Seconded by Rep. HOPPER Vote: 16-1

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # (if offered) Interim Study (2nd year)

Moved by Rep. BERCH Seconded by Rep. HOPPER Vote: 16-1

MOTION: (Please check one box)

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Moved by Rep. Seconded by Rep. Vote:

MOTION: (Please check one box)

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Moved by Rep. Seconded by Rep. Vote:

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: Motion

Respectfully submitted: Sandra B Keans Rep Sandra Keans, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/29/2018 1:55:35 PM
Roll Call Committee Registers
Report

2018 SESSION

JUDICIARY

Bill #: SB 493

Title: Committee to study the
establishing a commission to study the
codification of the mandatory evidence schedule...

PH Date: 3 / 20 / 2018

Exec Session Date: 4 / 18 / 18

Motion: OTPA

Amendment #: _____

MEMBER

YEAS

NAYS

Hagan, Joseph M. Chariman	✓	
Rouillard, Claire A. Vice Chairman	✓	
Hopper, Gary S.	✓	
Sylvia, Michael J.	✓	
Hull, Robert <i>HORN</i>	✓	
Wuelper, Kurt F.	✓	
Graham, Robert V.	✓	
Hynes, Dan	✓	
Janvrin, Jason A.	<i>ab</i>	
Leavitt, John A. <i>MORPHERT</i>	✓	
Wall, Janet G.	✓	
Horrigan, Timothy O.	✓	
Berch, Paul S.	✓	
Smith, Suzanne J.	✓	
Kenison, Linda B.	✓	
Keans, Sandra B. Clerk	✓	
DiLorenzo, Charlotte I.	✓	
Altschiller, Debra		✓
TOTAL VOTE:		

16 - 1



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Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 493

BILL TITLE: establishing a committee to study the codification of the exculpatory evidence schedule and related law enforcement protocols.

DATE:

ROOM: 208

Time Public Hearing Called to Order: 11:35

Time Adjourned: 11:40

(please circle if present)

Committee Members: Reps. Hagan, Rouillard, Keans, Hopper, Sylvia, Hull, Wuelper, R. Graham, Hynes, Janvrin, Leavitt, Wall, Horrigan, Berch, Suzanne Smith, Kenison, DiLorenzo and Altschiller

Bill Sponsors:

Sen. Carson

Sen. French

Rep. M. McCarthy

Sen. Gannon

Sen. Bradley

Rep. Wall

Sen. Soucy

Rep. Hopper

Rep. Hinch

TESTIMONY

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

SEN CARSON: ATTEMPT TO CLEAN UP SYSTEM KNOW AS LAURIE'S LIST - STANDARDIZE HOW ONE GETSON LIST. GIVES OFFICER A PLACE TO GET DETAILS OF WHY HE'S ON LIST:

Bill as Introduced

SB 493 - AS INTRODUCED

2018 SESSION

18-3008
04/03

SENATE BILL **493**

AN ACT establishing a committee to study the codification of the exculpatory evidence schedule and related law enforcement protocols.

SPONSORS: Sen. Carson, Dist 14; Sen. Gannon, Dist 23; Sen. Soucy, Dist 18; Sen. French, Dist 7; Sen. Bradley, Dist 3; Rep. Hopper, Hills. 2; Rep. M. McCarthy, Hills. 29; Rep. Wall, Straf. 6; Rep. Hinch, Hills. 21

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a committee to study whether or not to codify in statute the exculpatory evidence schedule (EES), formerly known as the "Laurie list," and the related law enforcement protocols established by the attorney general in a law enforcement memorandum dated March 21, 2017, in light of the evolution of the law since the New Hampshire supreme court decision in *State v. Laurie*, 139 N.H. 325 (1995).

.....

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT establishing a committee to study the codification of the exculpatory evidence schedule and related law enforcement protocols.

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

1 1 Committee Established. There is established a committee to study the codification of the
2 exculpatory evidence schedule and related law enforcement protocols.

3 2 Membership and Compensation.

4 I. The members of the committee shall be as follows:

5 (a) One member of the senate, appointed by the president of the senate.

6 (b) Two members of the house of representatives, one of whom shall be from the
7 judiciary committee and one of whom shall be from the criminal justice and public safety committee,
8 appointed by the speaker of the house of representatives.

9 II. Members of the committee shall receive mileage at the legislative rate when attending to
10 the duties of the committee.

11 3 Duties. The committee shall study the whether or not to codify in statute the exculpatory
12 evidence schedule (EES), formerly known as the "Laurie list," and the related law enforcement
13 protocols established by the attorney general in a law enforcement memorandum dated March 21,
14 2017, in light of the evolution of the law since the New Hampshire supreme court decision in *State*
15 *v. Laurie*, 139 N.H. 325 (1995). The committee shall also study the provisions of RSA 105:13-b
16 regarding the confidentiality of police personnel files to determine if the statute should be amended
17 to incorporate, in whole or in part, the EES and the related law enforcement protocols.

18 4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
19 among the members. The first meeting of the committee shall be called by the senate member. The
20 first meeting of the committee shall be held within 45 days of the effective date of this section. Two
21 members of the committee shall constitute a quorum.

22 5 Report. The committee shall report its findings and any recommendations for proposed
23 legislation to the president of the senate, the speaker of the house of representatives, the senate
24 clerk, the house clerk, the governor, and the state library on or before November 1, 2018.

25 6 Effective Date. This act shall take effect upon its passage.