
Committee Report

REGULAR CALENDAR

February 7, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Criminal Justice and
Public Safety to which was referred HB 491,**

AN ACT relative to questioning and detaining suspects.

**Having considered the same, report the same with the
following amendment, and the recommendation that the
bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Beth Rodd

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 491
Title:	relative to questioning and detaining suspects.
Date:	February 7, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-0295h

STATEMENT OF INTENT

This bill reiterates the constitutional right of a person to "remain silent" when a law enforcement officer stops an individual and asks for personal information (name, address, destination). It clarifies that refusing to answer the inquiry will not be grounds for arrest. Current law, as written, appears to allow law enforcement officers to "demand" this information, non-compliance resulting in arrest. This bill clarifies that law enforcement may "ask" for but not "demand" a response. It respects individuals and their "right to remain silent."

Vote 19-1.

Rep. Beth Rodd
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 491, relative to questioning and detaining suspects. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Beth Rodd for the **Majority** of Criminal Justice and Public Safety. This bill reiterates the constitutional right of a person to "remain silent" when a law enforcement officer stops an individual and asks for personal information (name, address, destination). It clarifies that refusing to answer the inquiry will not be grounds for arrest. Current law, as written, appears to allow law enforcement officers to "demand" this information, non-compliance resulting in arrest. This bill clarifies that law enforcement may "ask" for but not "demand" a response. It respects individuals and their "right to remain silent." **Vote 19-1.**

Original: House Clerk
Cc: Committee Bill File

**MAJORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 491
Title:	relative to questioning and detaining suspects.
Date:	February 7, 2019
Consent Calendar:	REGULAR
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STATEMENT OF INTENT

This bill reiterates the constitutional right of a person to "remain silent" when a law enforcement officer stops an individual and asks for personal information (name, address, destination) It clarifies that refusing to answer the inquiry will not be grounds for arrest. Current law, as written, appears to allow law enforcement officers to "demand" this information, non-compliance resulting in arrest. This bill clarifies that law enforcement may "ask" for but not "demand" a response. It respects individuals and their "right to remain silent."

Vote 19-1.

Rep. Beth Rodd
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: CFPS

BILL NUMBER: HB 491

TITLE: Relative to questioning and detaining suspects

DATE: 2/7/19 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. <u>02954</u>

STATEMENT OF INTENT:

This bill reiterates the constitutional right of a person to "remain silent" when a law enforcement officer stops an individual and asks for personal information (name, address, destination). It clarifies that refusing to answer the inquiry will not be grounds for arrest. Current law, as written, appears to allow law enforcement officers to "demand" this information, non-compliance resulting in arrest. This bill clarifies that law enforcement may "ask" for but not "demand" a response. It respects individuals and their "right to remain silent."

COMMITTEE VOTE: 19-1

RESPECTFULLY SUBMITTED,

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

Rep. Scott Radtke
For the Committee

Rep. Rodd, Merr. 6
February 5, 2019
2019-0295h
04/05

Amendment to HB 491

1 Amend the bill by replacing section 1 with the following:

2

3 1 Questioning and Detaining Suspects. Amend RSA 594:2 to read as follows:

4 594:2 Questioning and Detaining Suspects. A peace officer may stop any person [~~abroad~~] whom
5 [~~he~~] ***the officer*** has reason to suspect is committing, has committed, or is about to commit a crime[
6 ~~and may demand of him his name, address, business abroad and where he is going~~]. ***An officer***
7 ***may request the person's name and address, but the officer shall not arrest the person***
8 ***based solely on the person's refusal to provide such information.***

Amendment to HB 491
- Page 2 -

2019-0295h

AMENDED ANALYSIS

This bill provides that refusing to provide a name and address, upon request by a peace officer, shall not, by itself, constitute grounds for arrest.

REGULAR CALENDAR

February 7, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Criminal Justice and
Public Safety to which was referred HB 491,**

AN ACT relative to questioning and detaining suspects.

**Having considered the same, and being unable to agree
with the Majority, report with the following resolution:**

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Dennis Green

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**



Committee:	Criminal Justice and Public Safety
Bill Number:	HB 491
Title:	relative to questioning and detaining suspects.
Date:	February 7, 2019
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE <<Amendment #>>

STATEMENT OF INTENT

NH Supreme Court decision in State vs. White 119 NH 567 (1979) ruled that the extent that RSA 594:2 permits temporary detention for questioning on grounds less than probable cause to arrest...it is unconstitutional under NH Constitution Pt. 1, Art. 19. The Supreme Court noted that a person could be detained by the police for the purpose of custodial interrogation if the police had developed probable cause.

Rep. Dennis Green
FOR THE MINORITY

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 491, relative to questioning and detaining suspects. **INEXPEDIENT TO LEGISLATE.**

Rep. Dennis Green for the **Minority** of Criminal Justice and Public Safety. The NH Supreme Court decision in *State v. White*, 119 N.H. 567 (1979) ruled that to the extent that RSA 594:2 permits temporary detention for questioning on grounds less than probable cause to arrest...it is unconstitutional under the NH Constitution Pt. 1, Art. 19. The Supreme Court noted that a person could be detained by the police for the purpose of custodial interrogation if the police had developed probable cause.

Original: House Clerk

Cc: Committee Bill File

MINORITY REPORT

COMMITTEE: Criminal Justice & Public Safety
BILL NUMBER: HB 491
TITLE: Relative to questioning & detaining suspects

DATE: Feb. 7, 2019 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.
0295h

STATEMENT OF INTENT:

NH Supreme Court decision in State v. White
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RSA 594:2 permits temporary detention for
questioning on grounds less than probable cause to
ARREST... it is unconstitutional under NH Const.
pt. 2, Art. 19. The Supreme Court noted that a person
could be detained by the police for the purpose of
custodial interrogation if the police had developed
probable cause.

COMMITTEE VOTE: 19-1

• Copy to Committee Bill File

RESPECTFULLY SUBMITTED,
Rep. Ann E. Green
For the Minority

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 491

BILL TITLE: relative to questioning and detaining suspects.

DATE: February 7, 2019

LOB ROOM: 204

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Rodd

Seconded by Rep. Burt

AM Vote: 19-1

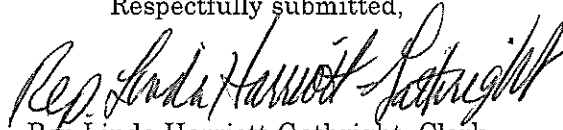
Amendment # 0295

Moved by Rep. Burt

Seconded by Rep. Wallace

Vote: 19-1

Respectfully submitted,



Rep Linda Harriott-Gathright, Clerk

OFFICE OF THE HOUSE CLERK



1/14/2019 3:15:39 PM
Roll Call Committee Registers
Report

2019 SESSION

Criminal Justice and Public Safety

accept amendment

Bill #: 491 Motion: ← AM #: 0295 Exec Session Date: 2/7/19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Cushing, Robert Renny Chairman	✓		
Rodd, Beth Vice Chairman	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Harriott-Gathright, Linda C. Clerk	✓		
Opderbecke, Linn	✓		
Bordenet, John	✓		
Meuse, David	✓		
Murphy, Nancy A.	✓		
Newman, Ray E.	✓		
Radhakrishnan, Julie	✓		
Swinburne, Sandy L.	✓		
Welch, David A.	✓		
Fields, Dennis H.	✓		
Burt, John A.	✓		
Green, Dennis E.	✓	✓	
McNally, Jody L.	✓	✓	
Testerman, Dave	✓		
Wallace, Scott	✓		
Abbas, Daryl A.	✓		
TOTAL VOTE:	19	1	

OFFICE OF THE HOUSE CLERK



1/14/2019 3:15:39 PM
 Roll Call Committee Registers
 Report

2019 SESSION

Criminal Justice and Public Safety

Bill #: 491 Motion: OTP AM #: 1042 Exec Session Date: 2/7/19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Cushing, Robert Renny Chairman	✓		
Rodd, Beth Vice Chairman	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Harriott-Gathright, Linda C. Clerk	✓		
Opderbecke, Linn	✓		
Bordenet, John	✓		
Meuse, David	✓		
Murphy, Nancy A.	✓		
Newman, Ray E.	✓		
Radhakrishnan, Julie	✓		
Swinburne, Sandy L.	✓		
Welch, David A.	✓		
Fields, Dennis H.	✓		
Burt, John A.	✓		
Green, Dennis E.		✓	
McNally, Jody L.	✓		
Testerman, Dave	✓		
Wallace, Scott	✓		
Abbas, Daryl A.	✓		
TOTAL VOTE:	19	1	

Rep. Rodd, Merr. 6
February 5, 2019
2019-0295h
04/05

Amendment to HB 491

1 Amend the bill by replacing section 1 with the following:

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5 [~~he~~] ***the officer*** has reason to suspect is committing, has committed, or is about to commit a crime[
6 ~~and may demand of him his name, address, business abroad and where he is going~~]. ***An officer***
7 ***may request the person's name and address, but the officer shall not arrest the person***
8 ***based solely on the person's refusal to provide such information.***

Amendment to HB 491
- Page 2 -

2019-0295h

AMENDED ANALYSIS

This bill provides that refusing to provide a name and address, upon request by a peace officer, shall not, by itself, constitute grounds for arrest.

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 491

BILL TITLE: relative to questioning and detaining suspects.

DATE: January 24, 2019

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:00

Time Adjourned: 11:35

Committee Members: Reps. Cushing, Rodd, Harriott-Gathright, Pantelakos, O'Hearne, Opderbecke, Bordenet, Meuse, Murphy, R. Newman, Radhakrishman, Swinburne, Welch, Fields, Burt, Green, McNally, Testerman, Wallace and Abbas

Bill Sponsors:

Rep. Rodd
Rep. Almy

Rep. Keans

Rep. Opderbecke

TESTIMONY

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

Rep. Beth Rodd, Sponsor, Support - Demand vs. Request; Response to show me your paper arrest.

*Henry Klementowicz, ACLU Staff Attorney, Support - Probable Cause Arrest; State vs. White decision.

Where going what are you doing here 2018
State Constitutional Right to remain silent.

Captain Jonathan Lemto, NH Assoc. of Chief of Police, Oppose - Situation vs. Arrest Effe of matters of minor infractions; arrested, charge, administration charges; investigate _ continue participation, criminal, city ordinance violation, trust pass, lengthy

Burden on PD

Probable cause to arrest

Law pass - how to arrest more crimes go unsolved

Explain true consequence of their action

Probable cause, to arrest

Might not charge under this status

Confusion between laws

Consistently speak of Nashua Policy

Will arrest 642

Katherine Cooper, Exec. Dir., NHACDL, Support -

Terry vs. Ohio - Clarified

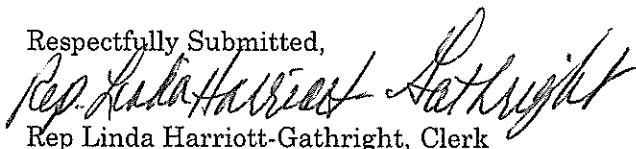
Fishing expedition - Makes it unconstitutional

Federal laws misconduct 1983 Actions

Captain Stephen Sloper, DOS, Oppose - Det. Major Crimes Unit 13 years

No Stance Provide Info

Respectfully Submitted,



Rep Linda Harriott-Gathright, Clerk

HB 491 594:2

Beth Rodd Merr 6

Spencer

Ⓢ

Demand vs. request
Response to show me your paper arrest.

Support

① Henry Klementowicz ACLU Staff Attorney
Probable Cause Arrest
Warrant requirement in arrest
State vs White decision

Where going what are you doing here 2018

State
Constitutional Right to remain silent

Oppose

Captain Jonathan Lemto NH Assoc of Chiefs of Police

Situation vs. arrest

Effect of matters of minor infractions
Arrested, charge, administration charges
Address investigate - continue participation
criminal, city ordinance violation, trust pass,

lengthy

Burden on PD I says

Probable cause to arrest
How pass - how to instruct
instruct to arrest
More crimes go unsolved

Feb 11 - 12th
Site

8:10 AM

State Prison - P4 Unit
DOC van transport

Explain true consequence of their action

Parkdale Cause, **Simons**

Might not charge under this status
Confusion between laws

Consistently speak of Nashua Policy
Will arrest 642

support Katherine Cooper

Capitol Criminal Defense Lawyers

300 lawyers

mission to educate

NHACDL

Terrill vs Ohio - Clarified

Fishing expedition

↳ Makes it unconstitutional

Federal laws misconduct 1983 actions

1st class

Mr Stephen Sloper DOS

Det major crimes unit 13 yrs

Men

NO
Storage
Provide
Info

Testimony



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Hampshire

Statement by Henry Klementowicz, Staff Attorney, ACLU-NH
House Criminal Justice and Public Safety Committee
House Bill 491
January 24, 2019

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (“ACLU-NH”)—a non-partisan, non-profit organization working to protect civil liberties throughout the state for over 50 years. House Bill 491 (HB 491) makes a narrow clarification to the law to make clear that if a person stopped on the street by the police does not answer questions, they cannot be arrested simply for not answering those questions. We respectfully urge the Committee to vote HB 491 *Ought to Pass*.

Current law provides that a police officer may stop a person and “demand” his name, address, business address and where he is going. This bill would change “demand” to request,¹ and would make clear that declining to respond to an officer’s request for information pursuant to this section shall not be grounds for arrest. The bill removes ambiguity by making clear that a person has a right to remain silent, which is a bedrock right within our Constitution and is consistent with our “Live Free or Die” values. This bill does not change an officer’s ability to arrest someone when the person has probable cause to believe a crime has been committed. Nor does it change the requirement in RSA 265:4 which requires a person driving a vehicle to give a police officer his name, address, date of birth and the name and address of the owner of the vehicle.

We know that this law has been used. The Union Leader reported in May of 2018 that a woman was charged with resisting arrest for repeatedly walking away and being uncooperative from police. This bill would ensure that simply refusing to cooperate with the police is not grounds for arrest.

The Fourth Amendment to the United States Constitution and Part I, Article 19 of the New Hampshire Constitution protect people from unreasonable seizures. This bill would further promote those values.

Sincerely,

Henry Klementowicz
Staff Attorney, ACLU-NH

¹ A Montana stop-and-identify statute uses the word “request.” See Mont. Code Ann. §46-5-401 (“A peace officer who has lawfully stopped a person or vehicle under this section may . . . request the person's name and present address and an explanation of the person's actions and, if the person is the driver of a vehicle, demand the person's driver's license and the vehicle's registration and proof of insurance.”)

Bill as Introduced

HB 491 - AS INTRODUCED

2019 SESSION

19-0520
08/04

HOUSE BILL

491

AN ACT

relative to questioning and detaining suspects.

SPONSORS:

Rep. Rodd, Merr. 6; Rep. Keans, Straf. 23; Rep. Opperbecke, Straf. 15; Rep. Almy, Graf. 13

COMMITTEE:

Criminal Justice and Public Safety

ANALYSIS

This bill clarifies that failure to answer a request of a peace officer to identify oneself is not grounds for arrest.

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 Nineteen

AN ACT relative to questioning and detaining suspects.

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

- 1 1 Questioning and Detaining Suspects. Amend RSA 594:2 to read as follows:
- 2 594:2 Questioning and Detaining Suspects. A peace officer may stop any person abroad whom
- 3 [~~he~~] *the officer* has reason to suspect is committing, has committed or is about to commit a crime,
- 4 and may [~~demand~~] *request* of him his name, address, business abroad and where he is going.
- 5 *Declining to respond to an officer's request for information pursuant to this section, shall*
- 6 *not be grounds for arrest.*
- 7 2 Effective Date. This act shall take effect 60 days after its passage.