

Committee Report

Rep. Testerman, Merr. 2
May 10, 2021
2021-1357h
04/08

Amendment to SB 40

- 1 Amend RSA 595-A:10, I(d) as inserted by section 1 of the bill by replacing it with the following:
- 2
- 3 (d) The operator cannot be further detained solely for refusing to consent to a search.

CONSENT CALENDAR

May 10, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Criminal Justice and Public Safety
to which was referred SB 40,**

**AN ACT (New Title) relative to informed consent to
search a motor vehicle and amending the
statutory requirements for a search warrant. Having
considered the same, report the same with the following
amendment, and the recommendation that the bill
OUGHT TO PASS WITH AMENDMENT.**

Rep. Chris True

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	SB 40
Title:	(New Title) relative to informed consent to search a motor vehicle and amending the statutory requirements for a search warrant.
Date:	May 10, 2021
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2021-1357h

STATEMENT OF INTENT

This bill amends the RSA's so that they are compatible with the statutes concerning electronic warrants. The bill also allows for law enforcement officers to search a motor vehicle without a warrant provided there is video and audio or the written consent of the operator detailing that the operator has been explicitly informed of their right not to consent and that not consenting shall not be a basis for probable cause nor reasonable suspicion. The amendment simply adds the word 'solely' to the section of the operator cannot be further detained solely for refusing to consent to a search.

Vote 18-3.

Rep. Chris True
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Criminal Justice and Public Safety

SB 40, (New Title) relative to informed consent to search a motor vehicle and amending the statutory requirements for a search warrant. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Chris True for Criminal Justice and Public Safety. This bill amends the RSA's so that they are compatible with the statutes concerning electronic warrants. The bill also allows for law enforcement officers to search a motor vehicle without a warrant provided there is video and audio or the written consent of the operator detailing that the operator has been explicitly informed of their right not to consent and that not consenting shall not be a basis for probable cause nor reasonable suspicion. The amendment simply adds the word 'solely' to the section of the operator cannot be further detained solely for refusing to consent to a search. **Vote 18-3.**

Original: House Clerk
Cc: Committee Bill File

Voting Sheets

Karen Karwocki

From: Karen Karwocki
Sent: Monday, July 12, 2021 1:53 PM
To: Karen Karwocki

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/22/2021 9:56:15 AM
Roll Call Committee Registers
Report

2021 SESSION *3 members not in seat*

Criminal Justice and Public Safety

Bill #: *SB 40* Motion: *DTP* AM #: *2021-13* Exec Session Date: *5/10/21*
57 *117*

Members	YEAS	NAYS	NV
Abbas, Daryl A. Chairman	11		
Welch, David A. Vice Chairman	1		
Burt, John A.	2		
Hopper, Gary S.	3		
Green, Dennis E.	4		
Wallace, Scott	5		
Testerman, Dave	6		
True, Chris	7		
Pratt, Kevin M.	8		
Marston, Dick	9		
Rhodes, Jennifer M. Clerk	10		
Harriott-Gathright, Linda C.		1	
Pantelakos, Laura C.		2	
O'Hearne, Andrew S. <i>Sue Newman</i>		3	
Bordenet, John		4	
Meuse, David		5	
Newman, Ray E.		6	
Bouldin, Amanda C.		7	
Conley, Casey M.		8	
Gein-Knight, Nicole		9	
Bradley, Amy		10	

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Karen Karwocki

From: Karen Karwocki
Sent: Monday, July 12, 2021 1:51 PM
To: Karen Karwocki

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
EXECUTIVE SESSION on Bill # SB 40

BILL TITLE: informed consent to search a motor vehicle +
Amending the statutory requirements

DATE: 5/10/21

LOB ROOM: _____

MOTION: (Please check one box)

OTP ITL Retain (1st year) Adoption of Amendment # 2021-13578
(if offered) H

Interim Study (2nd year)

Moved by Rep. Testerman Seconded by Rep. Welch Vote: 11/7

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
(if offered)

Interim Study (2nd year)

Moved by Rep. Testerman Seconded by Rep. Wallace Vote: _____

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
(if offered)

Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
(if offered)

Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: YES NO

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

Respectfully submitted: _____
Rep. Jennifer Rhodes

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Karen Karwocki

From: Karen Karwocki
Sent: Monday, July 12, 2021 1:52 PM
To: Karen Karwocki

OFFICE OF THE HOUSE CLERK

1/22/2021 9:56:15 AM
Roll Call Committee Registers
Report

2021 SESSION

Criminal Justice and Public Safety

Bill #: 3840 Motion: DTP-A AM #: 3001 Exec Session Date: 5/10/21
3854
3872 18/3

Members	YEAS	NAYS	NV
Abbas, Daryl A. Chairman	18		
Welch, David A. Vice Chairman	1		
Burt, John A.	2		
Hopper, Gary S.	3		
Green, Dennis E.	4		
Wallace, Scott	5		
Testerman, Dave	6		
True, Chris		1	
Pratt, Kevin M.		2	
Marston, Dick		3	
Rhodes, Jennifer M. Clerk	7		
Harriott-Gathright, Linda C.	8		
Pantelakos, Laura C.	9		
O'Hearne, Andrew S. - <u>See Newman</u>	10		
Bordenet, John	11		
Meuse, David	12 12		
Newman, Ray E.	13		
Bouldin, Amanda C.	14		
Conley, Casey M.	15		
Klein-Knight, Nicole	16		
Bradley, Amy	17		

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Public Hearing

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill SB40 on 2021-

Support: 78 Oppose: 1 Neutral: 1 Total to Testify: 7

[Export to Excel](#)

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane
Goldstein, David	Franklin, NH dgoldstein@franklinnh.org	A Member of the Public	Myself	Neutral	Yes (5m)	No
Head, Richard	Concord, NH rhead@courts.state.nh.us	State Agency Staff	Myself	Support	Yes (3m)	No
Chaffee, Devon	Concord, NH devon@aclu-nh.org	A Lobbyist	Myself	Support	Yes (2m)	No
Perencevich, Ruth	Concord, NH rperence@comcast.net	A Member of the Public	Myself	Support	Yes (0m)	No
Scherr, Albert	Portsmouth, NH Albert.scherr@law.unh.edu	A Member of the Public	Myself	Support	Yes (0m)	No
Shelton, Dwight	Peterborough, NH rosedew.shelton773@gmail.com	A Member of the Public	Myself	Support	Yes (0m)	No
French, Senator Harold	Canterbury, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 7	Support	Yes (0m)	No
Reagan, Senator John	Deerfield, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 17	Support	No	No
Torpey, Jeanne	Concord, NH jtorp51@comcast.net	A Member of the Public	Myself	Support	No	No
Henninger, Heidi	Dover, NH heidi.henninger@gmail.com	A Member of the Public	Myself	Support	No	No
Bixby, Peter	Dover, NH peter.bixby@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Phillips, Margery	Hanover, NH margeryphillips@gmail.com	A Member of the Public	Myself	Support	No	No
Atherton, John	Dover, NH JMAtherton.3@gmail.com	A Member of the Public	Myself	Support	No	No
Hinkel, Robert	Dover, NH r.hinkel@gmail.com	A Member of the Public	Myself	Support	No	No
Harris, Pamela	Hanover, NH pampsharris@aol.com	A Member of the Public	Myself	Support	No	No
Spielman, Kathy	Durham, NH jspielman@comcast.net	A Member of the Public	Myself	Support	No	No
Fieseher, James	NH, NH mypersonalmd@comcast.net	A Member of the Public	Myself	Support	No	No
Reed, Barbara D.	North Swanzey, NH BDReed74@gmail.com	A Member of the Public	Myself	Support	No	No
Petrucelli, Maxine	Webster, NH maxinepet@gmail.com	A Member of the Public	Myself	Support	No	No
Petrucelli, Charles	Webster, NH chasmxpet@gmail.com	A Member of the Public	Myself	Support	No	No
Feole, Danielle	Salem, NH feole.danielle@gmail.com	A Member of the Public	Myself	Support	No	No
Hinebauch, Mel	6032244866, NH melhinebauch@gmail.com	A Member of the Public	Myself	Support	No	No

Jones, Andrew	Pembroke, NH arj11718@yahoo.com	A Member of the Public	Myself	Support	No	No
Devore, Gary	Pembroke, NH torin_asheron@yahoo.com	A Member of the Public	Myself	Support	No	No
Straiton, Marie	NH, NH m.straiton@comcast.net	A Member of the Public	Myself	Support	No	No
Wild, Gail	Newport, NH gailwild@gmail.com	A Member of the Public	Myself	Support	No	No
Wiggins, Frank	Newport, NH frankwigginsconstruction@comcast.net	A Member of the Public	Myself	Support	No	No
Stocker, Kathleen	Dover, NH k-stocker@comcast.net	A Member of the Public	Myself	Support	No	No
Weber, Jill	NH, NH jill@frajilfarms.com	A Member of the Public	Myself	Support	No	No
Hackmann, Kent	Andover, NH hackmann@uidaho.edu	A Member of the Public	Myself	Support	No	No
Collea, Beth	Dover, NH bethcollea@aol.com	A Member of the Public	Myself	Support	No	No
Hardwick, Bryant	Dover, NH portxejf@yahoo.com	A Member of the Public	Myself	Support	No	No
Ward, Senator Ruth	Stoddard, NH ruth.ward@leg.state.nh.us	An Elected Official	Senate District 8	Support	No	No
Rosenwald, Cindy	Concord, NH cindy.rosenwald@leg.state.nh.us	An Elected Official	SD 13	Support	No	No
Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Support	No	No
Edelson, Rachel	Nashua, NH redelson@hotmail.com	A Member of the Public	Myself	Support	No	No
Hatcher, Phil	Dover, NH phil.hatcher@gmail.com	A Member of the Public	Myself	Support	No	No
Chait, George	Sunapee, NH george.chait@gmail.com	A Member of the Public	Myself	Support	No	No
Lynch, Chrisinda	Concord, NH cmmelynch@comcast.net	A Member of the Public	Myself	Support	No	No
Raley, Pamela	Dover, NH psralay@gmail.com	A Member of the Public	Myself	Support	No	No
Moran, Karen	Webster, NH karenmoran@tds.net	A Member of the Public	Myself	Support	No	No
thompson, julia	durham, NH maple371@gmail.com	A Member of the Public	Myself	Support	No	No
Dunker, Susan	Dover, NH Sedunker15@gmail.com	A Member of the Public	Myself	Support	No	No
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Support	No	No
Smart, Rick	Dover, NH Richardsmart@comcast.net	A Member of the Public	Myself	Support	No	No
Hansen, Lorraine	Rollinsford, NH lhansennh@gmail.com	A Member of the Public	Myself	Support	No	No
Feder, Marsha	HOLLIS, NH marshafeder@gmail.com	A Member of the Public	Myself	Support	No	No
Long, Julian	Rochester, NH julianleelong@yahoo.com	A Member of the Public	Myself	Support	No	No
Maskwa, Donna	Dover, NH donna.maskwa@gmail.com	A Member of the Public	Myself	Support	No	No

McNamece, Brigid	Concord, NH brigidmcnamece@yahoo.com	A Member of the Public	Myself	Support	No	No
Jachim, Nancy	Newport, NH nancyjachim@gmail.com	A Member of the Public	Myself	Support	No	No
Insolia, Janet	Dover, NH jinsolia@comcast.net	A Member of the Public	Myself	Support	No	No
Coakley, Lynn	Milford, NH Lynn.r.coakley@gmail.com	A Member of the Public	Myself	Support	No	No
Crook, Mary	Stratham, NH mndcrook@gmail.com	A Member of the Public	Myself	Support	No	No
Laker-Phelps, Gail	NH, NH lpsart@tds.net	A Member of the Public	Myself	Support	No	No
Falk, Cheri	Wilton, NH Falk.cj@gmail.com	A Member of the Public	Myself	Support	No	No
Clark, Denise	MILFORD, NH denise.m.clark03055@gmail.com	A Member of the Public	Myself	Support	No	No
Rayton, Linden	Hopkinton, NH lrayton13@yahoo.com	A Member of the Public	Myself	Oppose	No	No
Gordon, Margaret	Wearse, NH Megordon98@gmail.com	A Member of the Public	Myself	Support	No	No
Sinclair-Pappas, Barbara	Chichester, NH bespappas@gmail.com	A Member of the Public	Myself	Support	No	No
Rettew, Annie	Concord, NH abrettew@gmail.com	A Member of the Public	Myself	Support	No	No
Robertson, Howard	KEENE, NH howardr113@gmail.com	A Member of the Public	Myself	Support	No	No
Istel, Claudia	Acworth, NH claudia@sover.net	A Member of the Public	Myself	Support	No	No
See, Alvin	Loudon, NH absee@4Liberty.net	A Member of the Public	Myself	Support	No	No
Lukaszewicz, Debra	Nashua, NH devoid_2@hotmail	A Member of the Public	Myself	Support	No	No
Pappas, James	CHICHESTER, NH jpappas235@gmail.com	A Member of the Public	Myself	Support	No	No
Blair, David	Dublin, NH orionblair@gmail.com	A Member of the Public	Myself	Support	No	No
Ellermann, Maureen	CONCORD, NH ellermannf@aol.com	A Member of the Public	Myself	Support	No	No
Schapira, Carol	Hopkinton, NH Carolschapira@me.com	A Member of the Public	Myself	Support	No	No
Brookmeyer, Janet	Grantham, NH brookmeyermusic@gmail.com	A Member of the Public	Myself	Support	No	No
Davis, Gregory	Salem, NH glospreys@comcast.net	A Member of the Public	Myself	Support	No	No
Billingham, Carla	Salem, NH billingham2@comcast.net	A Member of the Public	Myself	Support	No	No
Verschueren, Jim	Dover, NH jd.verschueren@gmail.com	A Member of the Public	Myself	Support	No	No
Platt, Elizabeth-Anne	CONCORD, NH lizanneplatt09@gmail.com	A Member of the Public	Myself	Support	No	No
Koch, Helmut	Concord, NH helmut.koch.2001@gmail.com	A Member of the Public	Myself	Support	No	No
Vincent, Laura	Loudon, NH lvlauravincen5@gmail.com	A Member of the Public	Myself	Support	No	No

Koch, Laurie	Concord, NH kochlj@aol.com	A Member of the Public	Myself	Support	No	No
Gordon, Laurie	Weare, NH Lmgord23@gmail.com	A Member of the Public	Myself	Support	No	No
Kaplan, Carol	Nashua, NH cakaplan@hotmail.com	A Member of the Public	Myself	Support	No	No
Spencer, Louise	Concord, NH lpskentstreet@gmail.com	A Member of the Public	Myself	Support	No	No

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON SB 40

BILL TITLE: (New Title) relative to informed consent to search a motor vehicle and amending the statutory requirements for a search warrant.

DATE: April 21, 2021

LOB ROOM: hybrid **Time Public Hearing Called to Order:** 9:00 a.m.

Time Adjourned: 9:40 a.m.

Committee Members: Reps. Abbas, Welch, Rhodes, Burt, Hopper, Green, Wallace, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Klein-Knight and Bradley

Bill Sponsors:

Sen. French
Sen. Reagan
Sen. Ward

Sen. Avard
Sen. Rosenwald

Sen. Gannon
Sen. D'Allesandro

TESTIMONY

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

Sen. French - supports. Introduced bill. Same bill as introduced by house. Have an amendment to have electronic search warrant.

Rep. O'Hearne - Is there a reason to have affidavit rather than sworn testimony.

Richard Head - Supports. AG's office feels necessary

Chief Goldstein - neutral. Franklin Police Chief - may be best to let court decide if an officer over stepped boundaries on searching a car.

Buzz Scherr - supports. recommend OTP

Lisa Mascio - support attorney DOC. mentioned differences between this bill and the house bill.

Joseph Ebert - neutral. Would like an amendment for the circumstances of a driver giving info. if the officer says they are obtaining a search warrant and towing the car.

Devon Chaffee , Supports. ACLU. If a person refuses to consent to a search, isn't a reason to detain them. There are reasons a person is able to be detained; just not for refusing a search.

Respectfully submitted,

Rep. Jennifer Rhodes, Clerk

Testimony

Archived: Monday, May 10, 2021 2:42:28 PM

From: [Richard W. Head](#)

Sent: Wednesday, April 21, 2021 9:58:40 AM

To: ~House Criminal Justice and Public Safety

Subject: SB40 (relative to informed consent to search a motor vehicle and amending the statutory warrant form)

Importance: Normal

Good morning Chairman Abbas and members of House Criminal Justice and Public Safety

I am writing to follow up on today's hearing on Senate Bill 40 (relative to informed consent to search a motor vehicle and amending the statutory Requirements for a search warrant). As I said in my testimony, Part 2 of SB 40 was requested by the New Hampshire Judicial Branch. I understand from the testimony that part 1 of SB 40 is similar to HB 485. If the Committee decides to allow HB 485 be the bill that addresses Part 1 dealing with consent to search a motor vehicle, that SB 40 be amended to allow Part 2 (regarding changes to the statutory search warrant form) to continue to the House floor.

Thank you for your attention to this and please feel free to contact me should you have any questions.

Richard

Richard W. Head
Government Affairs Coordinator
New Hampshire Judicial Branch
One Granite Place, Suite N400
Concord, NH 03301
rhead@courts.state.nh.us
Direct dial: 603-415-0779
Cell: 603-716-8235

Richard W. Head
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New Hampshire Judicial Branch
One Granite Place, Suite N400
Concord, NH 03301
rhead@courts.state.nh.us
Direct dial: 603-415-0779
Cell: 603-716-8235

Archived: Monday, April 19, 2021 9:10:12 AM
From: Rachel Edelson
Sent: Saturday, April 17, 2021 2:47:33 PM
To: ~House Criminal Justice and Public Safety
Subject: Vote OTP on SB40
Importance: Normal

Dear House Criminal Justice and Public Safety Committee,

As an involved resident of Nashua, I am writing to urge you to vote Ought to Pass on SB40.

The Senate already passed a bill similar to SB40 (HB485), but the House hasn't taken it up yet. Given the uncertainty of what will happen to HB485, I urge you to support SB40.

- This bill would require police officers who ask if they can search your car without a warrant to inform you that you have the right to say no, and that refusing to consent to the search cannot be used as grounds for a search warrant, to arrest you, or to detain you further. Put simply, this requires law enforcement officers to inform you of your right to say "no" when they ask to search your car without a warrant.
- This bill is particularly relevant for people of color who are disproportionately stopped by law enforcement, and whom the court has recognized experience encounters with law enforcement differently than white people.
- If you give consent to have law enforcement search your vehicle, it should be informed consent and not consent obtained by fear or not knowing of one's rights. You have the right to decline a warrantless search, all this bill does is require law enforcement to inform you of that right.

Sincerely,
Rachel Edelson
Bay Ridge Dr.
Nashua 03062

Archived: Monday, May 10, 2021 2:42:29 PM
From: [Elizabeth Janeway](#)
Sent: Monday, April 19, 2021 10:31:32 AM
To: ~House Criminal Justice and Public Safety
Subject: SB 40
Importance: Normal

Dear Committee: Please vote OTP on SB 40, a bill which I support. Thank you, Elizabeth C. Janeway of Webster, NH

The Senate already passed a bill similar to SB40 (HB485), but the House hasn't taken it up yet. Given the uncertainty of what will happen to HB485, I urge you to support SB40.

Bill as
Introduced

SB 40 - AS INTRODUCED

2021 SESSION

21-0581

04/08

SENATE BILL **40**

AN ACT relative to informed consent to search a motor vehicle.

SPONSORS: Sen. French, Dist 7; Sen. Avard, Dist 12; Sen. Gannon, Dist 23; Sen. Reagan, Dist 17; Sen. Rosenwald, Dist 13; Sen. D'Allesandro, Dist 20; Sen. Ward, Dist 8

COMMITTEE: Judiciary

ANALYSIS

This bill permits a warrantless search of a motor vehicle with the informed consent of the motor vehicle operator.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to informed consent to search a motor vehicle.

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

1 1 New Section; Search Warrants; Informed Consent Exception for Motor Vehicles. Amend RSA
2 595-A by inserting after section 9 the following new section:

3 595-A:10 Informed Consent Exception for Motor Vehicles.

4 I. A law enforcement officer may legally conduct a search of a motor vehicle without a
5 warrant under this chapter if the law enforcement officer expressly informs the operator of the motor
6 vehicle that:

7 (a) The operator has the right to refuse to consent to a search;

8 (b) Any refusal to consent to a search shall not constitute a basis either for probable
9 cause to arrest the operator or reasonable suspicion to detain the operator;

10 (c) The operator cannot be charged with any crime or violation for refusing to consent to
11 a search; and

12 (d) The operator cannot be further detained for refusing to consent to a search.

13 II. If the operator of a motor vehicle refuses to consent to a search, the law enforcement
14 officer shall cease any further questioning concerning consent to a search.

15 III. A law enforcement officer shall document any consent to search either by the signature
16 of the motor vehicle operator on a consent-to-search form providing notice of the provisions of
17 paragraphs I and II at the time of the consent, or by means of a video and sound recording of the
18 consent at the time of the consent. Such form or video and sound recording shall be retained until
19 any criminal charge resulting from the consent to search is fully resolved.

20 IV. Any act of a law enforcement officer which violates a provision of this section shall result
21 in the inadmissibility in any criminal proceeding of any evidence of obtained by the law enforcement
22 officer.

23 2 Effective Date. This act shall take effect 60 days after its passage.