

**REGULAR CALENDAR**

**February 23, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Criminal Justice and Public Safety  
to which was referred HB 1400,**

**AN ACT prohibiting law enforcement from using the  
scent of marijuana as probable cause for a search.**

**Having considered the same, report the same with the  
following resolution: RESOLVED, that it is  
INEXPEDIENT TO LEGISLATE.**

**Rep. Terry Roy**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1400</b>
Title:	<b>prohibiting law enforcement from using the scent of marijuana as probable cause for a search.</b>
Date:	<b>February 23, 2022</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### STATEMENT OF INTENT

The majority of the Criminal Justice and Public Safety Committee, after having heard testimony from various witnesses, concluded that this bill should be found inexpedient to legislate. The bill seeks to fix a problem that does not exist. Courts have already ruled that the smell of marijuana alone cannot be used as a basis for probable cause to search. This is referred to as "Case Law" and has the same effect as a law passed by the legislature and it has been so for a number of years. All New Hampshire law enforcement agencies receive training on new changes to the law and court rulings every year and are well aware of this ruling.

Vote 12-8.

Rep. Terry Roy  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Criminal Justice and Public Safety

**HB 1400**, prohibiting law enforcement from using the scent of marijuana as probable cause for a search. **INEXPEDIENT TO LEGISLATE.**

Rep. Terry Roy for Criminal Justice and Public Safety. The majority of the Criminal Justice and Public Safety Committee, after having heard testimony from various witnesses, concluded that this bill should be found inexpedient to legislate. The bill seeks to fix a problem that does not exist. Courts have already ruled that the smell of marijuana alone cannot be used as a basis for probable cause to search. This is referred to as "Case Law" and has the same effect as a law passed by the legislature and it has been so for a number of years. All New Hampshire law enforcement agencies receive training on new changes to the law and court rulings every year and are well aware of this ruling. **Vote 12-8.**

Original: House Clerk  
Cc: Committee Bill File

**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY**

**EXECUTIVE SESSION on HB 1400**

**BILL TITLE:** prohibiting law enforcement from using the scent of marijuana as probable cause for a search.

**DATE:** February 23, 2022

**LOB ROOM:** 202-204

**MOTIONS: INEXPEDIENT TO LEGISLATE**

Moved by Rep. Roy

Seconded by Rep. Marston

Vote: 12-8

**CONSENT CALENDAR: NO**

**Statement of Intent: Refer to Committee Report**

Respectfully submitted,

Rep Scott Wallace, Clerk



2022 SESSION

Criminal Justice and Public Safety

Bill #: HB 1400 Motion: FTL AM #:            Exec Session Date: 2-23-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	12		
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
<del>Hopper, Gary S.</del> <u>RHODES</u>	4		
Green, Dennis E.	5		
Wallace, Scott Clerk	6		
Testerman, Dave	7		
True, Chris	8		
Pratt, Kevin M.	9		
Marston, Dick	10		
Harriott-Gathright, Linda C.		1	
<del>Pantelakos, Laura C.</del> <u>S. NEWMAN</u>		2	
<del>O'Hearne, Andrew S.</del> <u>JACK</u>	11		
Bordenet, John		3	
Meuse, David		4	
Newman, Ray E.		5	
Bouldin, Amanda C.		6	
Conley, Casey M.		7	
Bradley, Amy			1
Espitia, Manny		8	
	12	8	1

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1400

**BILL TITLE:** prohibiting law enforcement from using the scent of marijuana as probable cause for a search.

**DATE:** January 21, 2022

**LOB ROOM:** 204

**Time Public Hearing Called to Order:** 1:52 p.m.

**Time Adjourned:** <<End

Time>>

**Committee Members:** Reps. Abbas, Roy, Wallace, Welch, Burt, Green, Testerman, Pratt, Marston, Harriott-Gathright, Bordenet, R. Newman, Amanda Bouldin, Conley and Bradley and Klein-Knight

**Bill Sponsors:**

Rep. Amanda Bouldin

**TESTIMONY**

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

Rep. **Bouldin** introduced the bill and cited NHSC cases.

Rep. **Edwards**, Rock 4, opposes the bill. Recommends an amendment.

Lt. Bill **Bright**, representing NH State Police (NHSP), opposes the bill.

Rep. **Welch** asked about the odor of burnt marijuana or fresh, not burnt, marijuana.

*Ans:* Either is used.

Rep. **Welch** asked about the effect on K-9 - officers.

Rep. **Green** asked if this bill would inhibit interdiction operations in NHSP.

Respectfully submitted

Rep. Scott Wallace

Clerk



# House Remote Testify

## Criminal Justice and Public Safety Committee Testify List for Bill HB1400 on 2022-01-21

Support: 9 Oppose: 12 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Short, Raymond	Hooksett, NH rayshort910@gmail.com	A Member of the Public	Myself	Support	No	No	1/15/2022 4:32 PM
Howland, Curtis	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	No	1/16/2022 6:10 PM
Gould, Rep. Linda	Bedford, NH lgouldr@myfairpoint.net	An Elected Official	Myself	Oppose	No	No	1/17/2022 11:37 AM
Reed, Sarah	Concord, NH stubbs.saraha@gmail.com	A Member of the Public	Myself	Support	No	No	1/18/2022 10:56 AM
Reed, William	Concord, NH willie.b.reed@gmail.com	A Member of the Public	Myself	Support	No	No	1/18/2022 10:58 AM
Bryfonski, John	Bedford, NH jbryfonski@bedfordnh.org	A Member of the Public	NH Association of Chiefs of Police	Oppose	No	No	1/18/2022 11:16 AM
Frost, Sherry	Dover, NH s.frost@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/19/2022 9:08 AM
Walczyk, Alexander	Hooksett, NH awalczyk@comcast.net	An Elected Official	Myself	Support	No	No	1/20/2022 1:29 PM
Anastasia, Patricia	Londonderry, NH patti.anastasia@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 4:50 PM
Baiocchetti, Vinnie	Gilmanton Iron Works, NH vbaiocchetti@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 6:16 PM
Osgood, Bradley	Londonderry, NH bradleyosgood@msn.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 7:53 PM
Chase, Mark	Center Harbor, NH mchase@centerharbornh.org	A Member of the Public	Myself	Oppose	No	No	1/21/2022 8:03 AM
Laurent, Tara	Nottingham, NH tlaurent@greenlandpd.us	A Member of the Public	NH Assoc of Chiefs of Police & Greenland Police Dept	Oppose	No	No	1/21/2022 8:30 AM



Lewandoski, Mark	Belmont, NH policechief@belmontnh.org	A Member of the Public	Myself	Oppose	No	No	1/21/2022 9:39 AM
Reynolds, Charles	Dover, NH REYNOLDS.CHARLES@COMCAST.NET	A Member of the Public	Myself	Oppose	No	No	1/21/2022 9:57 AM
Lord, Brian	Deering, NH blord@antrimpolice.com	A Member of the Public	Myself	Oppose	No	No	1/21/2022 9:58 AM
Reams, Mark	Amherst, NH mreams@amherstnh.gov	A Member of the Public	Myself	Oppose	No	No	1/21/2022 10:02 AM
Marquis, Eric	Weare, NH hnk@gsinet.net	A Member of the Public	Myself	Oppose	No	No	1/21/2022 11:40 AM
Shagoury, Andrew	CENTER TUFTONBORO, NH a.shagoury@roadrunner.com	A Member of the Public	Myself	Oppose	No	No	1/21/2022 1:05 PM
Wood, Zephan	Pembroke, NH zephanw@gmail.com	A Member of the Public	Myself	Support	No	No	1/21/2022 1:14 PM
Chester, Russan	bedford, NH nassur34@protonmail.com	A Member of the Public	Myself	Support	No	No	1/21/2022 4:13 PM

**Archived:** Thursday, March 10, 2022 2:40:47 PM  
**From:** Sharon Clark  
**Sent:** Monday, January 17, 2022 10:07:21 PM  
**To:** ~House Criminal Justice and Public Safety  
**Subject:** Support HB1400  
**Importance:** Normal

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Dear Committee Members,

As admitted by former drug enforcement officer Barry Cooper, police officers can lie that they smell marijuana to justify a search of a home, vehicle, or person. This is invasive and violating. Without the requirement for objective evidence, any person could be subject to this invasion without recourse.

Please support HB 1400.

Sincerely,

Sharon Clark

**HB 1400 - AS INTRODUCED**

2022 SESSION

22-2696

08/10

HOUSE BILL            ***1400***

AN ACT                prohibiting law enforcement from using the scent of marijuana as probable cause for a search.

SPONSORS:            Rep. Amanda Bouldin, Hills. 12

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill prohibits law enforcement from using the scent of marijuana as probable cause for a search.

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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 1400 - AS INTRODUCED**

22-2696

08/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT prohibiting law enforcement from using the scent of marijuana as probable cause for a search.

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

1 1 New Section; Probable Cause; Scent of Marijuana Prohibited. Amend RSA 595-A by inserting  
2 after section 10 the following new section:

3 595-A:11 Probable Cause; Scent of Marijuana Prohibited. An officer shall not use the scent of  
4 marijuana as probable cause to conduct a search or to request a search warrant.

5 2 Effective Date. This act shall take effect 60 days after its passage.