

CHAPTER 225
HB 471 - FINAL VERSION

7Apr2021... 0386h
04/29/2021 1169s

2021 SESSION

21-0627
08/04

HOUSE BILL ***471***

AN ACT relative to police disciplinary hearings and authorizing the department of justice to maintain an exculpatory evidence schedule.

SPONSORS: Rep. Roy, Rock. 32; Rep. M. King, Hills. 33; Rep. Stevens, Hills. 34; Rep. Potucek, Rock. 6; Rep. Spillane, Rock. 2; Rep. Bixby, Straf. 17; Rep. Welch, Rock. 13; Rep. Bordenet, Ches. 5; Rep. Moran, Hills. 34; Rep. Frost, Straf. 16; Sen. Reagan, Dist 17

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

 This bill requires police disciplinary hearings to be open to the public unless certain confidential information may be revealed and authorizes the department of justice to maintain an exculpatory evidence schedule.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to police disciplinary hearings and authorizing the department of justice to maintain an exculpatory evidence schedule.

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

1 225:1 Police Standards and Trainings; Hearings. Amend RSA 106-L:5, III to read as follows:

2 III. For the purposes of a disciplinary hearing, subpoena and examine witnesses under oath,
3 take oaths or affirmations, and reduce to writing testimony given at any hearing. Any person whose
4 rights or privileges may be affected at such a disciplinary hearing may appear with witnesses and be
5 represented by counsel. ***A disciplinary hearing shall be public; however, a portion of the***
6 ***hearing may be closed to the public only if the party seeking closure can prove with***
7 ***specificity that the portion of the hearing will reveal confidential information that creates***
8 ***a compelling interest outweighing the public's presumed right of access. The council may,***
9 ***in a nonpublic session, hear and consider the request for closure and rule on such request.***

10 225:2 New Section; Exculpatory Evidence Schedule. Amend RSA 105 by inserting after section
11 13-c the following new section:

12 105:13-d Exculpatory Evidence Schedule.

13 I. The department of justice may voluntarily maintain an exculpatory evidence schedule.
14 The exculpatory evidence schedule shall consist of a list of all current or former law enforcement
15 officers whose personnel information contain potentially exculpatory evidence. Subject to the
16 provisions of this section, the exculpatory evidence schedule may be maintained by the department
17 of justice and shall be a public record subject to RSA 91-A.

18 II. For officers on the exculpatory evidence schedule as of the effective date of this section:

19 (a) The department of justice shall, upon the effective date of this section, provide
20 written notice to all such persons. This notice shall notify the individual that he or she is currently
21 on the exculpatory evidence schedule, that he or she has 180 days from the date of notification to file
22 a lawsuit in superior court regarding the officer's placement on the exculpatory evidence schedule
23 after which any cause of action the officer might have to challenge his or her placement on the
24 exculpatory evidence schedule shall be extinguished; however, for officers added to the exculpatory
25 evidence schedule from April 30, 2018 to the effective date of this section, this notice shall state that
26 the officer has 90 days from the date of notification to file a lawsuit in superior court regarding the
27 officer's placement on the exculpatory evidence schedule, after which any cause of action the officer
28 might have to challenge his or her placement on the exculpatory evidence schedule shall be
29 extinguished.

CHAPTER 225
HB 471 - FINAL VERSION
- Page 2 -

1 (b) A person on the exculpatory evidence schedule is presumed to have received the
2 officer-specific notice referenced in subparagraph II(a), 3 business days after the department of
3 justice sent it via first class mail to the officer's last known address.

4 (c) Any lawsuit by an officer regarding his or her placement on the exculpatory evidence
5 schedule shall name as a party to the lawsuit the law enforcement agency that recommended the
6 officer's placement on the exculpatory evidence schedule. Any such lawsuit shall also provide the
7 department of justice with notice that any such action has been filed. The law enforcement officer
8 shall provide notice of any court order and the disposition of any such action to the department of
9 justice at each stage of the proceedings. The department of justice shall have the right to intervene
10 in any such matter at any time. Any claim seeking an order finding that the underlying misconduct
11 is not potentially exculpatory shall name the department of justice as a party.

12 (d) One hundred and eighty days from the date of notification for officers added to the
13 exculpatory evidence schedule prior to April 30, 2018, and 90 days from the date of notification for
14 officers added to the exculpatory evidence schedule between April 30, 2018 and the effective date of
15 this section, individuals and corresponding information on the exculpatory evidence schedule shall
16 be made public, except for any individual with a pending legal action regarding the officer's
17 placement on the exculpatory evidence schedule. Once the pending action has concluded with a final
18 order, after exhausting any applicable appellate rights, the individual's name and corresponding
19 information will become public unless:

20 (1) In a matter in which the department of justice is a party, a court issues an order
21 finding that the underlying misconduct is not potentially exculpatory; or

22 (2) A court issues an order finding that the law enforcement agency erred in
23 recommending that the officer be placed on the exculpatory evidence schedule.

24 (e) If the court issues an order finding that an officer did not receive adequate due
25 process and remands the matter back to the law enforcement agency for further due process
26 proceedings, then the officer's name shall not be publicly disclosed until the due process ordered is
27 finally exhausted. If the officer subsequently ceases to pursue or does not challenge the alleged
28 conduct leading to placement on the exculpatory evidence schedule through any applicable grievance
29 process, then the officer's placement on the exculpatory evidence schedule shall become permanent
30 and his or her name and corresponding information on the exculpatory evidence schedule shall
31 become public. If the officer does challenge through any applicable grievance process the alleged
32 conduct leading to placement on the exculpatory evidence schedule, then the officer's placement on
33 the exculpatory evidence schedule shall become permanent and his or her name and corresponding
34 information on the schedule shall become public only after the completion of the grievance process,
35 and after the officer has exhausted all appellate rights, unless the grievance process determines that
36 the alleged underlying potentially exculpatory misconduct was unfounded, not sustained, or that the
37 officer was exonerated. In this section, the term "grievance process" means any process established

CHAPTER 225
HB 471 - FINAL VERSION
- Page 3 -

1 by a collective bargaining agreement or by law that provides an employee an opportunity to contest
2 an employment decision made by an employer.

3 III. For officers who are added to the exculpatory evidence schedule after the effective date
4 of this section:

5 (a) Local law enforcement agencies shall send notice to the department of justice
6 identifying the name and mailing address of any officer who they contend should be placed on the
7 exculpatory evidence schedule, briefly describing why the officer should be placed on the schedule,
8 describing how the officer was notified and afforded an opportunity to contest placement, and
9 describing the grievance procedures available to that officer, including the timeline for filing a
10 grievance.

11 (b) Upon receipt of notice by a law enforcement agency of an officer's placement on the
12 exculpatory evidence schedule, the department of justice shall add the officer to the exculpatory
13 evidence schedule and immediately provide written notice to the officer. The notice to the officer
14 shall specify that the officer has been added to the exculpatory evidence schedule. The placement on
15 the exculpatory evidence schedule shall be temporary and nonpublic unless and until the officer
16 exhausts any grievance process. This temporary, nonpublic portion of the exculpatory evidence
17 schedule shall not be a public record under RSA 91-A. If the officer ceases to pursue or does not
18 challenge the alleged conduct leading to placement on the exculpatory evidence schedule through
19 any applicable grievance process, then the officer's placement on the exculpatory evidence schedule
20 shall become permanent and his or her name and corresponding information on the exculpatory
21 evidence schedule shall become public. If the officer does challenge through any applicable grievance
22 process the alleged conduct leading to placement on the exculpatory evidence schedule, then the
23 officer's placement on the exculpatory evidence schedule shall become permanent and his or her
24 name and corresponding information on the exculpatory evidence schedule shall become public only
25 after the completion of the grievance process, and after the officer has exhausted all appellate rights,
26 unless the grievance process determines that the alleged underlying potentially exculpatory
27 misconduct was unfounded, not sustained, or that the officer was exonerated. The officer shall
28 timely notify the department of justice of whether he or she is going through the grievance process
29 concerning the conduct that led to placement on the exculpatory evidence schedule and the outcome
30 of such proceedings.

31 IV. The department of justice shall at least monthly update the exculpatory evidence
32 schedule within 30 days of this section's effective date on a publicly accessible website, with a
33 notation indicating the date in which the exculpatory evidence schedule was updated.

34 V. Beginning on January 1, 2022, and quarterly thereafter, the department of justice,
35 provided it continues to maintain the exculpatory evidence schedule, shall file a report with the
36 governor, the president of the senate, the speaker of the house of representatives, and the
37 chairpersons of the house and senate judiciary committees concerning compliance with this section.

CHAPTER 225
HB 471 - FINAL VERSION
- Page 4 -

1 This report shall be made available to the public. This report shall include the total number of
2 officers on the exculpatory evidence schedule, the number of officers who were sent notice under
3 paragraphs II and III, the number of officers whose names have been disclosed to the public under
4 each paragraph of this section, the number of officers who have filed lawsuits under this section,
5 including the case name, number, jurisdiction, and corresponding field on the redacted exculpatory
6 evidence schedule indicating the officer who has filed the lawsuit, and the number of people who are
7 temporarily on the nonpublic exculpatory evidence schedule pending any grievance process. Nothing
8 herein shall preclude the court from taking any necessary step to protect the anonymity of the officer
9 before entry of a final order.

10 VI. Nothing in this section shall require the department of justice to maintain an
11 exculpatory evidence schedule. Any obligations established under the provisions of this section shall
12 apply only as long as the exculpatory evidence schedule exists. Nothing in this section shall relieve
13 any prosecutor of their obligation to provide exculpatory evidence to criminal defendants.

14 225:3 Effective Date.

15 I. Section 2 of this act shall take effect 30 days after its passage.

II. The remainder of this act shall take effect upon its passage.

Approved: August 25, 2021

Effective Date:

I. Section 2 effective September 24, 2021.

II. Remainder effective August 25, 2021.