

Sen. Bradley, Dist 3  
Sen. Carson, Dist 14  
Sen. Whitley, Dist 15  
Sen. French, Dist 7  
Sen. Gannon, Dist 23  
April 8, 2021  
2021-1118s  
08/04

Amendment to HB 471

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

2

3 AN ACT relative to police disciplinary hearings and authorizing the department of justice to  
4 maintain an exculpatory evidence schedule.  
5

6 Amend the bill by replacing all after section 1 with the following:

7

8 2 New Section; Exculpatory Evidence Schedule. Amend RSA 105 by inserting after section 13-c  
9 the following new section:

10 105:13-d Exculpatory Evidence Schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

32           V. Beginning on January 1, 2022, and quarterly thereafter, the department of justice,  
33 provided it continues to maintain the exculpatory evidence schedule, shall file a report with the  
34 governor, the president of the senate, the speaker of the house of representatives, and the  
35 chairpersons of the house and senate judiciary committees concerning compliance with this section.  
36 This report shall be made available to the public. This report shall include the total number of  
37 officers on the exculpatory evidence schedule, the number of officers who were sent notice under

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

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

12 3 Effective Date.

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

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

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**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