

**CHAPTER 196**  
**SB 40 - FINAL VERSION**

03/18/2021 0757s  
06/24/2021 1985CofC  
06/24/2021 2077EBA

2021 SESSION

21-0581  
04/08

SENATE BILL        **40**

AN ACT                relative to informed consent to search a motor vehicle and amending the statutory requirements for a search warrant.

SPONSORS:        Sen. French, Dist 7; Sen. Avar, 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

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AMENDED ANALYSIS

This bill permits a warrantless search of a motor vehicle with the informed consent of the motor vehicle operator. The bill also amends the statutory requirements for a search warrant to allow consistency with the requirements for electronic warrants and requires that any person on the grounds of a department of corrections facility shall be subject to 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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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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 and amending the statutory requirements for a search warrant.

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

1            196:1 New Section; Search Warrants; Informed Consent Exception for Motor Vehicles. Amend  
2 RSA 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            V. This section shall not preclude searches incident to arrest; searches allowed under the  
24 United States Constitution for officer safety; searches on any grounds, lands, or parking areas of any  
25 state or county correctional facility or transitional housing unit operated by the department of  
26 corrections; or inventory searches of lawfully-seized property, including but not limited to vehicles  
27 towed in conjunction with the arrest of the operator.

28            VI. Any person on prison grounds or in a department of corrections facility, regardless of

**CHAPTER 196**  
**SB 40 - FINAL VERSION**  
**- Page 2 -**

whether such person is a resident, visitor, staff, or anyone identified in some other category, shall be subject to search without warning of their vehicle, possessions, and person pursuant to administrative rule Cor 306.

196:2 Search Warrants; Form of Warrant; Written Statement Under Oath. Amend RSA 595-A:3 and 595-A:4 to read as follows:

595-A:3 Form of Warrant. The warrant shall be in substantially the following form:

The State of New Hampshire

(County), ss. (Name) Court.

To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any Constable or Police Officer of any city or town, within our said State.

Proof by ~~[affidavit]~~ **written statement under oath** (supplemented by oral statements under oath) having been made this day before (name of person authorized to issue warrant) by (names of person or persons whose ~~[affidavits]~~ **written statements under oath** have been taken) that there is probable cause for believing that (certain property has been stolen, embezzled, or fraudulently obtained; certain property is intended for use or has been used as the means of committing a crime; contraband; evidence of the crime to which the probable cause upon which the search warrant is issued relates.)

We therefore command you in the daytime (or at any time of the day or night) to make an immediate search of (identify premises) (occupied by A.B.) and (of the person of A.B.) and of any person present who may be found to have such property in his possession or under his control or to whom such property may have been delivered, for the following property:

(description of property)

and if you find any such property or any part thereof to bring it and the persons in whose possession it is found before (name of court and location).

Dated at (city or town) this ..... day of ....., 20.....

595-A:4 ~~[Affidavit]~~ **Written Statement Under Oath** in Support of Application for Warrant; Contents and Form.

A person seeking a search warrant shall appear ~~[personally]~~ before a court or justice authorized to issue search warrants in criminal cases and shall give ~~[an affidavit]~~ **a written statement under oath** in substantially the form hereinafter prescribed. Such ~~[affidavit]~~ **written statement under oath** shall contain facts, information, and circumstances upon which such person relies to establish probable cause for the issuance of the warrant and such ~~[affidavit]~~ **written statement under oath** may be supplemented by oral statements under oath for the establishment of probable cause. The person issuing the warrant shall retain the ~~[affidavit]~~ **written statement under oath** and shall make notes, personally, of the substance, or arrange for a transcript, of any oral statements under oath supplementing the ~~[affidavit]~~ **written statement under oath**. The person issuing the search warrant shall deliver the ~~[affidavit]~~ **written statement under oath** and the notes or transcript

**CHAPTER 196**  
**SB 40 - FINAL VERSION**  
**- Page 3 -**

within 3 days after the issuance of the warrant to the court to which the warrant is returnable. Upon the return of said warrant, the [affidavit] **written statement under oath** and the notes or transcript shall be attached to it and shall be filed therewith, and they shall be a public document when the warrant is returned, unless otherwise ordered by a court of record.

The [affidavit] **written statement under oath** in support of the application for a search warrant shall be in substantially the following form:

The State of New Hampshire

(County), ss. (Name) Court.  
....., 20.....

I, (name of applicant) being duly sworn, depose and say:

1. I am (describe position, assignment, office, etc.).
2. I have information, based upon (describe source, facts indicating reliability of source and nature of information; if based on personal knowledge, so state).
3. Based upon the foregoing reliable information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described (has been stolen, etc.) and may be found (in the possession of A.B. or any other person) at premises (identify).
4. The property for which I seek the issuance of a search warrant is the following: (here describe the property as particularly as possible).

Wherefore, I request that the court issue a warrant and order of seizure, authorizing the search of (identify premises and the persons to be searched) and directing that if such property or evidence or any part thereof be found that it be seized and brought before the court; together with such other and further relief that the court may deem proper.

.....

Name

~~[Then personally appeared the above named ..... and made oath that the foregoing affidavit by him subscribed is true.~~

~~Before me this ..... day of ....., 20.....]~~

Return

I received the attached search warrant on ....., 20....., and have executed it as follows:

On ....., 20....., at ..... o'clock ... M, I searched (the person) (the premises) described in the warrant and I left a copy of the warrant with (name of person searched or owner) at (the place of search) together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of ..... and .....

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant .....

~~[Subscribed and sworn to and returned before me this ..... day of ....., 20.....]~~

**CHAPTER 196**  
**SB 40 - FINAL VERSION**  
**- Page 4 -**

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.....  
[Justice of the Court]      *Name*

***Signed under penalty of perjury, the penalty for which may include a fine or imprisonment  
or both.***

196:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: August 10, 2021

Effective Date: October 09, 2021