

HB 481-FN - AS INTRODUCED

2023 SESSION

23-0576

04/05

HOUSE BILL ***481-FN***

AN ACT relative to arrest warrants and search warrants.

SPONSORS: Rep. Yokela, Rock. 32

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires that the state disclose any prior evidence used to obtain either an arrest warrant or a search warrant, and whether a prior arrest or search warrant was denied based on the evidence being submitted in requesting a new arrest or search warrant.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to arrest warrants and search warrants.

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

1 1 Search Warrants; Requisites of Warrant. Amend RSA 595-A:2 to read as follows:

2 595-A:2 Requisites of Warrant.

3 ***I.*** Search warrants shall designate or describe the person, building, vessel, or vehicle to be
4 searched and shall particularly describe the property or articles to be searched for. They shall be
5 substantially in the form prescribed in RSA 595-A:3 and shall be directed to a sheriff or [~~his~~] ***a***
6 ***sheriff's*** deputy or to a constable or police officer, commanding him ***or her*** to search in the daytime,
7 or if the warrant so directs, in the nighttime, the person, building, vessel, or vehicle where the
8 property or articles for which he ***or she*** is required to search are believed to be concealed, and to
9 bring such property or articles when found, and the persons in whose possession they are found,
10 before any circuit or superior court named therein.

11 ***II.*** *The law enforcement officer or law enforcement agency requesting the search*
12 *warrant shall disclose any exculpatory evidence, whether they have knowledge of any prior*
13 *request for a search warrant involving the person, building, vessel, or vehicle which is the*
14 *subject of the pending request, and whether the pending request is based on any of the*
15 *same evidence of any prior request. If the pending request is based on any of the same*
16 *evidence as a prior request, the officer or agency shall include the date or dates of such*
17 *prior request, the name of the judge or justice of the peace that reviewed it, the particular*
18 *evidence submitted, and whether or not a search warrant was granted based on such*
19 *evidence.*

20 ***III.*** *The state shall disclose whether they know of any other prior requests for a*
21 *search warrant for the same individual using any of the evidence being submitted for*
22 *consideration for the pending warrant request or any other exculpatory evidence for the*
23 *charge when presenting to a grand jury.*

24 ***IV.*** *Any person who violates the provisions of paragraph II or III shall be subject to*
25 *a fine of up to \$1,000 for each violation.*

26 2 Jurisdiction and Procedure Generally; Warrants. Amend RSA 592-A:8 to read as follows:

27 592-A:8 Warrants.

28 ***I.*** A justice of the peace or justice of the circuit court, upon such complaint when signed
29 under oath, may issue a warrant for the arrest of the person so charged with an offense committed or
30 triable in the county, directed to the sheriff of any county or his deputy or to any constable or police
31 officer of any town in the county.

1 ***II. The law enforcement officer or law enforcement agency requesting the arrest***
2 ***warrant shall disclose exculpatory evidence, whether they have knowledge of any prior***
3 ***request for a arrest warrant involving the person, building, vessel, or vehicle which is the***
4 ***subject of the pending request, and whether the pending request is based on any of the***
5 ***same evidence any prior request. If the pending request is based on any of the same***
6 ***evidence as a prior request, the officer or agency shall include the date or dates of such***
7 ***prior request, the name of the judge or justice of the peace that reviewed it, the particular***
8 ***evidence submitted, and whether or not an arrest warrant was granted based on such***
9 ***evidence.***

10 ***III. The state shall disclose whether they know of any other prior requests for an***
11 ***arrest warrant for the same individual using any of the evidence being submitted for***
12 ***consideration for the pending warrant request or any other exculpatory evidence for the***
13 ***charge when presenting to a grand jury.***

14 ***IV. Any person who violates the provisions of paragraph II or III shall be subject to***
15 ***a fine of up to \$1,000 for each violation.***

16 3 Effective Date. This act shall take effect January 1, 2024.

**HB 481-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to arrest warrants and search warrants.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill requires that the state disclose any prior evidence used to obtain either an arrest warrant or a search warrant, and whether a prior arrest or search warrant was denied based on the evidence being submitted in requesting a new arrest or search warrant.

The Municipal Association assumes the intent of the bill is to discourage “judge shopping” by putting judges on notice where issuance of a warrant was denied by another judge based on the same evidence. Any prosecuting attorney engaging in such activity would be subject to a fine. The Association indicates it is unlikely that the activity targeted by the legislation occurs with any real frequency, and therefore the financial impact is likely to be de minimus. It is possible, however, that litigation will occur over the meaning of the phrase “if they have knowledge” which may or may not put a temporal context to that phrase. If such a temporal context exists, which would likely reflect the existing legal rule that any actor for the state is presumed to have knowledge of anything that any actor of the state does, it is possible that local law enforcement will be obligated to create and maintain records relative to who, where, and what was previously subject to a search warrant and, therefore, additional expenses may be incurred at the local level.

The Judicial Branch does not expect the requirements of this bill will have a significant fiscal impact on the Branch. This bill would require that at the time law enforcement requests a search warrant, the officer must also disclose any prior requests for search warrants regarding the subject of the warrant request and whether the new request is based on the same evidence as a prior request. Any person who violates the new requirements would be subject to a \$1,000 fine. Similar requirements would apply to an arrest warrant requested by the State. The Branch does not expect that the new requirements described in this bill would significantly modify the Branch's current practices and would not have a substantial fiscal impact on the Branch.

The Department of Safety assumes this bill is intended to ensure documentation of attempts to obtain a search warrant in the affidavit for a new warrant. The Department indicates this could increase costs to Division of State Police if more documentation is needed, and therefore more time is needed, to write an affidavit. The bill also includes a fine for those failing to adhere to the bills requirements. The Department assumes an inadvertent error on behalf of the author of an affidavit could cost the state money in the form of a fine. The Department states potential costs to the Department are indeterminable.

The New Hampshire Association of Counties does not expect any impact on county revenue or expenditures from this bill.

AGENCIES CONTACTED:

Department of Safety, Judicial Branch, New Hampshire Municipal Association and New Hampshire Association of Counties