

LEGISLATIVE COMMITTEE MINUTES

HB1476

Bill as
Introduced

HB 1476-FN - AS AMENDED BY THE HOUSE

15Mar2022... 0895h

2022 SESSION

22-2058

04/11

HOUSE BILL ***1476-FN***

AN ACT relative to persons arrested while out on bail.

SPONSORS: Rep. Berry, Hills. 44; Rep. Shaw, Hills. 16; Rep. Alexander Jr., Hills. 6; Rep. Ankarberg, Straf. 10; Rep. Hamer, Hills. 17; Rep. Burt, Hills. 39; Rep. Long, Hills. 10; Rep. McLean, Hills. 44

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill provides that a person who commits an offense while on bail shall be detained without bail pending a hearing before a judge.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Two

AN ACT relative to persons arrested while out on bail.

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

1 1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, VIII to
2 read as follows:

3 VIII.(a) A person charged with an offense who is, or was at the time the offense was
4 committed, on release pending trial for a felony or misdemeanor under federal or state law, release
5 pending imposition or execution of sentence, appeal of sentence or conviction, or completion of
6 sentence, for any offense under federal or state law; or probation or parole for any offense under
7 federal or state law, except as provided in RSA 597:1-d, III[~~may~~]; ***or a person charged with a***
8 ***class B misdemeanor, third or subsequent offense, shall*** be detained for a period of not more
9 than [72] 36 hours from the time of his or her arrest, excluding Saturdays, Sundays and holidays[-
10 ~~The law enforcement agency making the arrest shall notify the appropriate court, probation or~~
11 ~~parole official, or federal, state, or local law enforcement official. Upon such notice, the court shall~~
12 ~~direct the clerk to notify by telephone the department of corrections, division of field services, of the~~
13 ~~pending bail hearing. If the department fails or declines to take the person into custody during that~~
14 ~~period, the person shall be treated in accordance with the provisions of law governing release~~
15 ~~pending trial. Probationers and parolees who are arrested and fail to advise their supervisory~~
16 ~~probation officer or parole officer in accordance with the conditions of probations and parole may be~~
17 ~~subject to arrest and detention as probation and parole violators.] ***and, notwithstanding***
18 ***paragraph III, shall be held in preventive detention without bail pending a hearing before***
19 ***a judge. The court shall not order personal recognizance bail in such cases.***~~

20 2 Effective Date. This act shall take effect 60 days after its passage.

HB 1476-FN- FISCAL NOTE
 AS INTRODUCED

AN ACT relative to persons arrested while out on bail.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
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 Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill provides that a person who commits an offense while on bail shall be detained without bail pending a hearing before a judge.

The Judicial Branch indicates this bill would strike the discretionary 72 hour detention; notice to body responsible for the released person to provide an opportunity to take the person into custody, and replace it with a provision that requires the person be held in preventive detention without bail pending a hearing for not more than 72 hours. It would further prohibit personal recognizance bail. The Branch does not track the number of persons who are on release and who are subsequently arrested for committing a new crime and cannot therefore estimate the number of new bail hearings that would occur. In addition, the Branch does not track how many persons are taken into custody by probation or parole officials or police officials under the current system who would not be notified of the arrest and pending bail hearing under the proposal in this bill. It is also unknown what impact the prohibition on personal recognizance bail would have on the number of appeals that may be taken from bail decisions, but the Judicial Branch assumes there would be an increase in bail appeal hearings filed in Superior Court.

With the inclusion of all misdemeanor charges and the likely increase in appeals of bail decisions to the Superior Court, the Judicial Branch assumes this bill will likely result in a substantial increase in bail hearings in both the Superior (for felonies and bail decision appeals) and Circuit

Courts (for misdemeanor bail hearings). This will likely result in the need for additional judicial and clerical resources in both court systems to manage the increase in hearings and coordination of hearing times with the county jails.

The Department of Corrections is not able to determine the fiscal impact of this bill because it is not able to predict the number of individuals who would be subject to this bill. The bill has the potential to increase the number of individuals returned to a Department of Corrections facility on parole violations, as the probation/parole officer will no longer be able to make the determination of whether or not a person is returned to the facility. Based on data from the last 13 months, there was an average of 42 parole violators and 6 probation violators per month. The Department states the average annual cost of incarcerating an individual in the general population for the fiscal year ending June 30, 2021 was \$54,386. The average cost to supervise an individual by the Department's Division of Field Services for the fiscal year ending June 30, 2021 was \$603.

The New Hampshire Association of Counties states this bill would increase costs for the county houses of corrections as they would hold people longer. The Association is unable to predict how many crimes will be committed while a person is out on bail, and therefore is unable to determine the cost to county government.

The New Hampshire Municipal Association states municipalities may save officer time and pay as they would no longer need to call bail commissioners and wait for their response, but they also may need to transfer additional arrestees to the county house of correction. The Association indicates it is unlikely that municipalities would incur significant costs as a result of this change in process.

It is assumed that any fiscal impact would occur after FY 2022.

AGENCIES CONTACTED:

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

HB 1476-FN - AS AMENDED BY THE SENATE

15Mar2022... 0895h
04/28/2022 1686s

2022 SESSION

22-2058
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HOUSE BILL ***1476-FN***

AN ACT relative to release of a defendant pending trial.

SPONSORS: Rep. Berry, Hills. 44; Rep. Shaw, Hills. 16; Rep. Alexander Jr., Hills. 6; Rep. Ankarberg, Straf. 10; Rep. Hamer, Hills. 17; Rep. Burt, Hills. 39; Rep. Long, Hills. 10; Rep. McLean, Hills. 44

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill lists certain offenses which, if committed by the defendant, create a rebuttable presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

Explanation: Matter added to current law appears in ***bold italics***.
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HB 1476-FN - AS AMENDED BY THE SENATE

15Mar2022... 0895h
04/28/2022 1686s

22-2058
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to release of a defendant pending trial.

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

1 1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, I-III(a) to
2 read as follows:

3 597:2 Release of a Defendant Pending Trial.

4 I. Except as provided in paragraph *III or VI*, upon the appearance before the court of a
5 person charged with an offense, the court shall issue an order that, pending arraignment or trial, the
6 person be:

7 (a) Released on his or her personal recognizance or upon execution of an unsecured
8 appearance bond, pursuant to the provisions of paragraph III;

9 (b) Released on a condition or combination of conditions pursuant to the provisions of
10 paragraph III;

11 (c) Detained; or

12 (d) Temporarily detained to permit revocation of conditional release pursuant to the
13 provisions of paragraph VIII.

14 II. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be
15 entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing,
16 the person be:

17 (a) Released on his or her personal recognizance or upon execution of an unsecured
18 appearance bond, pursuant to the provisions of paragraph III;

19 (b) Released on a condition or combination of conditions pursuant to the provisions of
20 paragraph III; or

21 (c) Detained.

22 III. When considering whether to release or detain a person, the court *and, if applicable,*
23 *a bail commissioner* shall consider the following issues:

24 (a) Safety of the public or the defendant.

25 (1) *Except as provided in RSA 597:1-c, a person who is charged with*
26 *homicide under RSA 630; first degree assault under RSA 631:1; second degree assault*
27 *under RSA 631:2; domestic violence under RSA 631:2-b; aggravated felonious sexual assault*
28 *under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping under RSA*
29 *633:1; stalking under RSA 633:3-a; trafficking in persons under RSA 633:7; robbery under*
30 *RSA 636:1, III; possession, manufacture, or distribution of child sexual abuse images under*

1 *RSA 649-A; or computer pornography and child exploitation under RSA 649-B; shall not be*
2 *brought before a bail commissioner and shall, upon arrest, be detained for a period of not*
3 *more than 36 hours from the time of his or her arrest, excluding Saturdays, Sundays and*
4 *holidays.*

5 (2) If a person is charged with any *other* criminal offense, an offense listed in RSA
6 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged
7 with a violation of a protective order issued under RSA 173-B, the court may order preventive
8 detention without bail, or, in the alternative, may order restrictive conditions including but not
9 limited to electronic monitoring and supervision, only if the court determines by clear and convincing
10 evidence that release will endanger the safety of that person or the public. In determining whether
11 release will endanger the safety of that person or the public, the court may consider all relevant
12 factors presented pursuant to paragraph IV.

13 2 Effective Date. This act shall take effect January 1, 2023.

**HB 1476-FN FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2022-1686s)**

AN ACT relative to release of a defendant pending trial.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
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 Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill lists certain offenses which, if committed by the defendant, create a rebuttable presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

The Judicial Branch states this bill, as amended by the Senate, would require that a person who is charged with an offense listed in proposed RSA 597:2, III(a)(1) be detained pending arraignment before the court. Arraignments shall occur no later than 36 hours after arrest based upon the rebuttable presumption the person charged is a danger to the public (36 hours excluding Saturdays, Sundays, holidays).

The Judicial Branch provided the following information based on 2019 data:

- There were 10,161 charges filed under the above referenced RSAs which resulted in 5,362 cases in the Superior (1,312) and Circuit Courts (4,050).
- 2,849 of the cases in the Circuit Court did not have a video arraignment.
- The case counts in Circuit Court where no arraignment was held are assumed to be bail decisions by bail commissioners that would become Circuit Court arraignments under this bill.

- The majority of criminal cases in Circuit Court are filed in Manchester, Nashua, Rochester and Concord.
- 2019 data was used for this analysis to account for temporary changes in criminal filings that occurred as a result of the pandemic in 2020 and 2021.

Both the Superior and Circuit Courts coordinate daily with county jails to provide for video hearings of all types. Each county jail has a limited number of time slots available for video hearings with the court. In many counties, the current hearing schedule has filled all or nearly all available video time slots. As a result, the Branch assumes many of incarcerated arraignments under the bill will result in transportation of the defendant to the courthouse by county sheriffs. The Branch reimburses county sheriffs for transport to all courts and security in Circuit Court.

Under existing law, a person detained by a Circuit Court has the right to a hearing in Circuit Court within 36 hours after the filing of a motion to reconsider the original detention order (36 hours excluding weekends and holidays). The Judicial Branch anticipates fewer people will be released with personal recognizance bail, which may result in more motions to reconsider being filed in Circuit Court. Bail decisions made in the Circuit Court can be appealed for a de novo hearing in the Superior Court which could also increase under the bill. The additional hearings will require additional court staff to manage the additional paperwork and for docket management and coordination with county jails for video time and with county sheriffs for transportation and security.

The Branch states, although the fiscal impact of the bill is indeterminable, it is potentially significant. The Branch believes additional Administrative Court Assistant positions will be needed in each of the four District Division courts with the busiest criminal dockets. Additional Court Monitor positions would be used to accommodate the increase in workload in the Superior Court. The Judicial Branch estimated the additional costs as follows:

Position	FY 2024 Salaries & Benefits Per Employee	Total FY 2024	FY 2025 Salaries & Benefits Per Employee	Total FY 2025
Administrative Court Assistant (4)	\$84,833	\$339,332	\$89,130	\$356,520
Court Monitor (4)	\$71,849	\$287,396	\$75,431	\$301,724
Total:		\$626,728		\$658,244

While additional judges may also be necessary, the Judicial Branch is unable to determine the whether, where or how many new judges or other resources would be required.

Each Sheriff transportation would require an additional sheriff transport fee, which is currently set at the statutory rate of \$65/full day and \$35/half day. Assuming roughly 2,500 additional half day transports (assuming some transports would include more than 1 defendant), there would be an additional cost of \$87,500. Pending legislation would increase the reimbursement rate for sheriff transport to the collective bargaining rate paid to Court Security Officers. (Currently \$120.18/day). The cost for such additional security is indeterminable.

The Judicial Council indicates the Public Defender currently has approximately 1,300 open cases for charges enumerated in proposed RSA 597:2, III(a)(1). Many of these clients are not currently incarcerated, though they could have been at the beginning of the case. Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments. Due to the ongoing indigent defense crisis, there are hundreds of clients currently without representation. Finding private attorneys for incarcerated clients is both challenging and costly. In some cases, the Council has had to appoint counsel to handle bail hearings and then find another attorney to accept the underlying case. The Council expects a significant, but indeterminate cost to the indigent defense system as a result of this bill. At this time there are not enough attorneys to handle the anticipated increase in bail hearings.

The New Hampshire Association of Counties states this bill would increase costs for the county houses of corrections as they would hold people longer while they wait to go before a judge. The Association is unable to predict how many crimes will be committed while a person is out on bail, and therefore is unable to determine the cost to county government.

The New Hampshire Municipal Association states municipalities may save officer time and pay as they would no longer need to call bail commissioners and wait for their response, but they also may need to transfer additional arrestees to the county house of correction. The Association indicates it is unlikely that municipalities would incur significant costs as a result of this change in process.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Corrections, New Hampshire Association of Counties and New Hampshire Municipal Association

HB 1476-FN- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2022-1941s)

AN ACT relative to release of a defendant pending trial.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
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Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
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
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METHODOLOGY:

This bill lists certain offenses which, if committed by the defendant, create a presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

The Judicial Branch states this bill, as amended by the Senate, would require that a person who is charged with an offense listed in proposed RSA 597:2, III(a)(1) be detained pending arraignment before the court. Arraignments shall occur no later than 24 hours after arrest (or 36 hours if arrested between 8:00 a.m. and 1:00 p.m.) based upon the rebuttable presumption the person charged is a danger to the public. (24 or 36 hours excluding Saturdays, Sundays, holidays). The Court would be required to detain the party pending trial if the Court determines by clear and convincing evidence that release of the person would constitute a danger to the public or themselves. The Judicial Branch provided the following information based on 2019 data:

- There were 10,161 charges filed under the above referenced RSAs which resulted in 5,362 cases in the Superior (1,312) and Circuit Courts (4,050).
- 2,849 of the cases in the Circuit Court did not have a video arraignment.
- The case counts in Circuit Court where no arraignment was held are assumed to be bail decisions by bail commissioners that would become Circuit Court arraignments under this bill.

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Under existing law, a person detained by a Circuit Court has the right to a hearing in Circuit Court within 36 hours after the filing of a motion to reconsider the original detention order (36 hours excluding weekends and holidays). The Judicial Branch anticipates fewer people will be released with personal recognizance bail, which may result in more motions to reconsider being filed in Circuit Court. Bail decisions made in the Circuit Court can be appealed for a de novo hearing in the Superior Court which could also increase under the bill. The additional hearings will require additional court staff to manage the additional paperwork and for docket management and coordination with county jails for video time and with county sheriffs for transportation and security.

The Branch states, although the fiscal impact of the bill is indeterminable, it is potentially significant. The Branch believes additional Administrative Court Assistant positions will be needed in each of the four District Division courts with the busiest criminal dockets. Additional Court Monitor positions would be used to accommodate the increase in workload in the Superior Court. The Judicial Branch estimated the additional costs as follows:

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The Department of Corrections indicates it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. Any fiscal impact would be an increase to expenditures. This bill has the potential to increase the number of individuals returned to an NHDOC facility on parole violations, as the probation/parole officer will no longer be able to make the determination of whether or not a person is returned to the facility. The Department states the average annual cost of incarcerating an individual in the general population for the fiscal year ending June 30, 2021 was \$54,386. The average cost to supervise an individual by the Department's Division of Field Services for the fiscal year ending June 30, 2021 was \$603.

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AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Corrections, New Hampshire Association of Counties and New Hampshire Municipal Association

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House COMMITTEE: Criminal Justice and Public Safety *QTP/A 13-7*
SENATE JUDICIARY: QTP/A 3-2

AMENDED ANALYSIS

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8 appearance bond, pursuant to the provisions of paragraph III;

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10 paragraph III;

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13 provisions of paragraph VIII.

14 II. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be
15 entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing,
16 the person be:

17 (a) Released on his or her personal recognizance or upon execution of an unsecured
18 appearance bond, pursuant to the provisions of paragraph III;

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2 *brought before a bail commissioner and shall, upon arrest, be detained for a period of not*
3 *more than 36 hours from the time of his or her arrest, excluding Saturdays, Sundays and*
4 *holidays.*

5 (2) If a person is charged with any *other* criminal offense, an offense listed in RSA
6 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged
7 with a violation of a protective order issued under RSA 173-B, the court may order preventive
8 detention without bail, or, in the alternative, may order restrictive conditions including but not
9 limited to electronic monitoring and supervision, only if the court determines by clear and convincing
10 evidence that release will endanger the safety of that person or the public. In determining whether
11 release will endanger the safety of that person or the public, the court may consider all relevant
12 factors presented pursuant to paragraph IV.

13 2 Effective Date. This act shall take effect January 1, 2023.

**HB 1476-FN- FISCAL NOTE
 AS INTRODUCED**

AN ACT relative to persons arrested while out on bail.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
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METHODOLOGY:

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The Judicial Branch indicates this bill would strike the discretionary 72 hour detention; notice to body responsible for the released person to provide an opportunity to take the person into custody, and replace it with a provision that requires the person be held in preventive detention without bail pending a hearing for not more than 72 hours. It would further prohibit personal recognizance bail. The Branch does not track the number of persons who are on release and who are subsequently arrested for committing a new crime and cannot therefore estimate the number of new bail hearings that would occur. In addition, the Branch does not track how many persons are taken into custody by probation or parole officials or police officials under the current system who would not be notified of the arrest and pending bail hearing under the proposal in this bill. It is also unknown what impact the prohibition on personal recognizance bail would have on the number of appeals that may be taken from bail decisions, but the Judicial Branch assumes there would be an increase in bail appeal hearings filed in Superior Court.

With the inclusion of all misdemeanor charges and the likely increase in appeals of bail decisions to the Superior Court, the Judicial Branch assumes this bill will likely result in a substantial increase in bail hearings in both the Superior (for felonies and bail decision appeals) and Circuit

Courts (for misdemeanor bail hearings). This will likely result in the need for additional judicial and clerical resources in both court systems to manage the increase in hearings and coordination of hearing times with the county jails.

The Department of Corrections is not able to determine the fiscal impact of this bill because it is not able to predict the number of individuals who would be subject to this bill. The bill has the potential to increase the number of individuals returned to a Department of Corrections facility on parole violations, as the probation/parole officer will no longer be able to make the determination of whether or not a person is returned to the facility. Based on data from the last 13 months, there was an average of 42 parole violators and 6 probation violators per month. The Department states the average annual cost of incarcerating an individual in the general population for the fiscal year ending June 30, 2021 was \$54,386. The average cost to supervise an individual by the Department's Division of Field Services for the fiscal year ending June 30, 2021 was \$603.

The New Hampshire Association of Counties states this bill would increase costs for the county houses of corrections as they would hold people longer. The Association is unable to predict how many crimes will be committed while a person is out on bail, and therefore is unable to determine the cost to county government.

The New Hampshire Municipal Association states municipalities may save officer time and pay as they would no longer need to call bail commissioners and wait for their response, but they also may need to transfer additional arrestees to the county house of correction. The Association indicates it is unlikely that municipalities would incur significant costs as a result of this change in process.

It is assumed that any fiscal impact would occur after FY 2022.

AGENCIES CONTACTED:

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

**HB 1476-FN FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2022-1686s)**

AN ACT relative to release of a defendant pending trial.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
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 Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill lists certain offenses which, if committed by the defendant, create a rebuttable presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

The Judicial Branch states this bill, as amended by the Senate, would require that a person who is charged with an offense listed in proposed RSA 597:2, III(a)(1) be detained pending arraignment before the court. Arraignments shall occur no later than 36 hours after arrest based upon the rebuttable presumption the person charged is a danger to the public (36 hours excluding Saturdays, Sundays, holidays).

The Judicial Branch provided the following information based on 2019 data:

- There were 10,161 charges filed under the above referenced RSAs which resulted in 5,362 cases in the Superior (1,312) and Circuit Courts (4,050).
- 2,849 of the cases in the Circuit Court did not have a video arraignment.
- The case counts in Circuit Court where no arraignment was held are assumed to be bail decisions by bail commissioners that would become Circuit Court arraignments under this bill.

- The majority of criminal cases in Circuit Court are filed in Manchester, Nashua, Rochester and Concord.
- 2019 data was used for this analysis to account for temporary changes in criminal filings that occurred as a result of the pandemic in 2020 and 2021.

Both the Superior and Circuit Courts coordinate daily with county jails to provide for video hearings of all types. Each county jail has a limited number of time slots available for video hearings with the court. In many counties, the current hearing schedule has filled all or nearly all available video time slots. As a result, the Branch assumes many of incarcerated arraignments under the bill will result in transportation of the defendant to the courthouse by county sheriffs. The Branch reimburses county sheriffs for transport to all courts and security in Circuit Court.

Under existing law, a person detained by a Circuit Court has the right to a hearing in Circuit Court within 36 hours after the filing of a motion to reconsider the original detention order (36 hours excluding weekends and holidays). The Judicial Branch anticipates fewer people will be released with personal recognizance bail, which may result in more motions to reconsider being filed in Circuit Court. Bail decisions made in the Circuit Court can be appealed for a de novo hearing in the Superior Court which could also increase under the bill. The additional hearings will require additional court staff to manage the additional paperwork and for docket management and coordination with county jails for video time and with county sheriffs for transportation and security.

The Branch states, although the fiscal impact of the bill is indeterminable, it is potentially significant. The Branch believes additional Administrative Court Assistant positions will be needed in each of the four District Division courts with the busiest criminal dockets. Additional Court Monitor positions would be used to accommodate the increase in workload in the Superior Court. The Judicial Branch estimated the additional costs as follows:

Position	FY 2024 Salaries & Benefits Per Employee	Total FY 2024	FY 2025 Salaries & Benefits Per Employee	Total FY 2025
Administrative Court Assistant (4)	\$84,833	\$339,332	\$89,130	\$356,520
Court Monitor (4)	\$71,849	\$287,396	\$75,431	\$301,724
Total:		\$626,728		\$658,244

While additional judges may also be necessary, the Judicial Branch is unable to determine the whether, where or how many new judges or other resources would be required.

Each Sheriff transportation would require an additional sheriff transport fee, which is currently set at the statutory rate of \$65/full day and \$35/half day. Assuming roughly 2,500 additional half day transports (assuming some transports would include more than 1 defendant), there would be an additional cost of \$87,500. Pending legislation would increase the reimbursement rate for sheriff transport to the collective bargaining rate paid to Court Security Officers. (Currently \$120.18/day). The cost for such additional security is indeterminable.

The Judicial Council indicates the Public Defender currently has approximately 1,300 open cases for charges enumerated in proposed RSA 597:2, III(a)(1). Many of these clients are not currently incarcerated, though they could have been at the beginning of the case. Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments. Due to the ongoing indigent defense crisis, there are hundreds of clients currently without representation. Finding private attorneys for incarcerated clients is both challenging and costly. In some cases, the Council has had to appoint counsel to handle bail hearings and then find another attorney to accept the underlying case. The Council expects a significant, but indeterminate cost to the indigent defense system as a result of this bill. At this time there are not enough attorneys to handle the anticipated increase in bail hearings.

The New Hampshire Association of Counties states this bill would increase costs for the county houses of corrections as they would hold people longer while they wait to go before a judge. The Association is unable to predict how many crimes will be committed while a person is out on bail, and therefore is unable to determine the cost to county government.

The New Hampshire Municipal Association states municipalities may save officer time and pay as they would no longer need to call bail commissioners and wait for their response, but they also may need to transfer additional arrestees to the county house of correction. The Association indicates it is unlikely that municipalities would incur significant costs as a result of this change in process.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Corrections, New Hampshire Association of Counties and New Hampshire Municipal Association

HB 1476-FN - AS AMENDED BY THE SENATE

15Mar2022... 0895h
04/28/2022 1686s
05/05/2022 1941s

2022 SESSION

22-2058
04/11

HOUSE BILL ***1476-FN***

AN ACT relative to release of a defendant pending trial.

SPONSORS: Rep. Berry, Hills. 44; Rep. Shaw, Hills. 16; Rep. Alexander Jr., Hills. 6; Rep. Ankarberg, Straf. 10; Rep. Hamer, Hills. 17; Rep. Burt, Hills. 39; Rep. Long, Hills. 10; Rep. McLean, Hills. 44

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill lists certain offenses which, if committed by the defendant, create a presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1476-FN - AS AMENDED BY THE SENATE

15Mar2022... 0895h
04/28/2022 1686s
05/05/2022 1941s

22-2058
04/11

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to release of a defendant pending trial.

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

1 1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, I-III(a) to
2 read as follows:

3 597:2 Release of a Defendant Pending Trial.

4 I. Except as provided in paragraph *III or VI*, upon the appearance before the court of a
5 person charged with an offense, the court shall issue an order that, pending arraignment or trial, the
6 person be:

7 (a) Released on his or her personal recognizance or upon execution of an unsecured
8 appearance bond, pursuant to the provisions of paragraph III;

9 (b) Released on a condition or combination of conditions pursuant to the provisions of
10 paragraph III;

11 (c) Detained; or

12 (d) Temporarily detained to permit revocation of conditional release pursuant to the
13 provisions of paragraph VIII.

14 II. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be
15 entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing,
16 the person be:

17 (a) Released on his or her personal recognizance or upon execution of an unsecured
18 appearance bond, pursuant to the provisions of paragraph III;

19 (b) Released on a condition or combination of conditions pursuant to the provisions of
20 paragraph III; or

21 (c) Detained.

22 III. When considering whether to release or detain a person, the court ***and, if applicable,***
23 ***a bail commissioner*** shall consider the following issues:

24 (a) Safety of the public or the defendant.

25 (1) ***Except as provided in RSA 597:1-c, a person who is charged with***
26 ***homicide under RSA 630; first degree assault under RSA 631:1; second degree assault***
27 ***under RSA 631:2; domestic violence under RSA 631:2-b; aggravated felonious sexual assault***
28 ***under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping under RSA***
29 ***633:1; stalking under RSA 633:3-a; trafficking in persons under RSA 633:7; robbery under***

1 *RSA 636:1, III; possession, manufacture, or distribution of child sexual abuse images under*
 2 *RSA 649-A; or computer pornography and child exploitation under RSA 649-B; shall not be*
 3 *brought before a bail commissioner and shall, upon arrest, be detained pending*
 4 *arraignment before the court. Arraignment shall occur no later than 24 hours after the*
 5 *arrest, Saturdays, Sundays, and legal holidays excluded, or no later than 36 hours after*
 6 *arrest if arrested between 8:00 a.m. and 1:00 p.m. and the person's attorney is unable to*
 7 *attend an arraignment on the same day, Saturdays, Sundays, and legal holidays excluded.*
 8 *At the person's appearance before the court, the court shall order that the person be*
 9 *detained pending trial if the court determines by clear and convincing evidence that*
 10 *release of the person is a danger to the public or themselves. In determining whether*
 11 *release will endanger the safety of that person or the public, the court may consider all*
 12 *relevant and material factors presented pursuant to paragraph IV. If the court does not*
 13 *find by clear and convincing evidence that the person must be detained, the court shall*
 14 *order the person released pursuant to paragraph I(a) or paragraph I(b), or, if applicable,*
 15 *temporarily detained pursuant to paragraph I(d).*

16 (2) If a person is charged with any *other* criminal offense, an offense listed in RSA
 17 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged
 18 with a violation of a protective order issued under RSA 173-B, the court may order preventive
 19 detention without bail, or, in the alternative, may order restrictive conditions including but not
 20 limited to electronic monitoring and supervision, only if the court determines by clear and convincing
 21 evidence that release will endanger the safety of that person or the public. In determining whether
 22 release will endanger the safety of that person or the public, the court may consider all relevant
 23 factors presented pursuant to paragraph IV.

24 2 Effective Date. This act shall take effect January 1, 2023.

HB 1476-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2022-1941s)

AN ACT relative to release of a defendant pending trial.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
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 Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill lists certain offenses which, if committed by the defendant, create a presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

The Judicial Branch states this bill, as amended by the Senate, would require that a person who is charged with an offense listed in proposed RSA 597:2, III(a)(1) be detained pending arraignment before the court. Arraignments shall occur no later than 24 hours after arrest (or 36 hours if arrested between 8:00 a.m. and 1:00 p.m.) based upon the rebuttable presumption the person charged is a danger to the public. (24 or 36 hours excluding Saturdays, Sundays, holidays). The Court would be required to detain the party pending trial if the Court determines by clear and convincing evidence that release of the person would constitute a danger to the public or themselves. The Judicial Branch provided the following information based on 2019 data:

- There were 10,161 charges filed under the above referenced RSAs which resulted in 5,362 cases in the Superior (1,312) and Circuit Courts (4,050).
- 2,849 of the cases in the Circuit Court did not have a video arraignment.
- The case counts in Circuit Court where no arraignment was held are assumed to be bail decisions by bail commissioners that would become Circuit Court arraignments under this bill.

- The majority of criminal cases in Circuit Court are filed in Manchester, Nashua, Rochester and Concord.
- 2019 data was used for this analysis to account for temporary changes in criminal filings that occurred as a result of the pandemic in 2020 and 2021.

Both the Superior and Circuit Courts coordinate daily with county jails to provide for video hearings of all types. Each county jail has a limited number of time slots available for video hearings with the court. In many counties, the current hearing schedule has filled all or nearly all available video time slots. As a result, the Branch assumes many of incarcerated arraignments under the bill will result in transportation of the defendant to the courthouse by county sheriffs. The Branch reimburses county sheriffs for transport to all courts and security in Circuit Court.

Under existing law, a person detained by a Circuit Court has the right to a hearing in Circuit Court within 36 hours after the filing of a motion to reconsider the original detention order (36 hours excluding weekends and holidays). The Judicial Branch anticipates fewer people will be released with personal recognizance bail, which may result in more motions to reconsider being filed in Circuit Court. Bail decisions made in the Circuit Court can be appealed for a de novo hearing in the Superior Court which could also increase under the bill. The additional hearings will require additional court staff to manage the additional paperwork and for docket management and coordination with county jails for video time and with county sheriffs for transportation and security.

The Branch states, although the fiscal impact of the bill is indeterminable, it is potentially significant. The Branch believes additional Administrative Court Assistant positions will be needed in each of the four District Division courts with the busiest criminal dockets. Additional Court Monitor positions would be used to accommodate the increase in workload in the Superior Court. The Judicial Branch estimated the additional costs as follows:

Position	FY 2024 Salaries & Benefits Per Employee	Total FY 2024	FY 2025 Salaries & Benefits Per Employee	Total FY 2025
Administrative Court Assistant (4)	\$84,833	\$339,332	\$89,130	\$356,520
Court Monitor (4)	\$71,849	\$287,396	\$75,431	\$301,724
Total:		\$626,728		\$658,244

While additional judges may also be necessary, the Judicial Branch is unable to determine whether, where or how many new judges or other resources would be required.

Each Sheriff transportation would require an additional sheriff transport fee, which is currently set at the statutory rate of \$65/full day and \$35/half day. Assuming roughly 2,500 additional half day transports (assuming some transports would include more than 1 defendant), there

would be an additional cost of \$87,500. Pending legislation would increase the reimbursement rate for sheriff transport to the collective bargaining rate paid to Court Security Officers. (Currently \$120.18/day). The cost for such additional security is indeterminable.

The Judicial Council indicates the Public Defender currently has approximately 1,300 open cases for charges enumerated in proposed RSA 597:2, III(a)(1). Many of these clients are not currently incarcerated, though they could have been at the beginning of the case. Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments. Due to the ongoing indigent defense crisis, there are hundreds of clients currently without representation. Finding private attorneys for incarcerated clients is both challenging and costly. In some cases, the Council has had to appoint counsel to handle bail hearings and then find another attorney to accept the underlying case. The Council expects a significant, but indeterminate cost to the indigent defense system as a result of this bill. Currently there are not enough attorneys to handle the anticipated increase in bail hearings.

The Department of Corrections indicates it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. Any fiscal impact would be an increase to expenditures. This bill has the potential to increase the number of individuals returned to an NHDOC facility on parole violations, as the probation/parole officer will no longer be able to make the determination of whether or not a person is returned to the facility. The Department states the average annual cost of incarcerating an individual in the general population for the fiscal year ending June 30, 2021 was \$54,386. The average cost to supervise an individual by the Department's Division of Field Services for the fiscal year ending June 30, 2021 was \$603.

The New Hampshire Association of Counties states this bill would increase costs for the county houses of corrections as they would hold people longer while they wait to go before a judge. The Association is unable to predict how many crimes will be committed while a person is out on bail, and therefore is unable to determine the cost to county government.

The New Hampshire Municipal Association states municipalities may save officer time and pay as they would no longer need to call bail commissioners and wait for their response, but they also may need to transfer additional arrestees to the county house of correction. The Association

indicates it is unlikely that municipalities would incur significant costs because of this change in process.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Corrections, New Hampshire Association of Counties and New Hampshire Municipal Association

Amendments

Sen. French, Dist 7
April 11, 2022
2022-1411s
04/08

Amendment to HB 1476-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, VIII to
4 read as follows:

5 VIII.(a) A person charged with an offense who is, or was, at the time the offense was
6 committed, on release pending trial for ~~[a felony or misdemeanor]~~ ***homicide, first degree assault,***
7 ***second degree assault, or felony sexual assault*** under federal or state law, release pending
8 imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for
9 any offense under federal or state law; or probation or parole for any offense under federal or state
10 law, except as provided in RSA 597:1-d, III, ~~[may]~~ ***shall*** be detained for a period of not more than
11 ~~[72]~~ ***36*** hours from the time of his or her arrest, excluding Saturdays, Sundays and holidays~~[-The~~
12 ~~law enforcement agency making the arrest shall notify the appropriate court, probation or parole~~
13 ~~official, or federal, state, or local law enforcement official. Upon such notice, the court shall direct~~
14 ~~the clerk to notify by telephone the department of corrections, division of field services, of the~~
15 ~~pending bail hearing. If the department fails or declines to take the person into custody during that~~
16 ~~period, the person shall be treated in accordance with the provisions of law governing release~~
17 ~~pending trial. Probationers and parolees who are arrested and fail to advise their supervisory~~
18 ~~probation officer or parole officer in accordance with the conditions of probations and parole may be~~
19 ~~subject to arrest and detention as probation and parole violators.]~~ ***and, notwithstanding***
20 ***paragraph III, shall be held in preventive detention without bail pending a hearing before***
21 ***a judge. The court shall not order personal recognizance bail in such cases.***

2022-1411s

AMENDED ANALYSIS

This bill provides that a person who commits certain offenses while on bail shall be detained without bail pending a hearing before a judge.

UNAPPROVED

Amendment to HB 1476-FN

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

2

3 AN ACT relative to release of a defendant pending trial.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, I-III(a) to
8 read as follows:

9 597:2 Release of a Defendant Pending Trial.

10 I. Except as provided in paragraph *III or VI*, upon the appearance before the court of a
11 person charged with an offense, the court shall issue an order that, pending arraignment or trial, the
12 person be:

13 (a) Released on his or her personal recognizance or upon execution of an unsecured
14 appearance bond, pursuant to the provisions of paragraph III;

15 (b) Released on a condition or combination of conditions pursuant to the provisions of
16 paragraph III;

17 (c) Detained; or

18 (d) Temporarily detained to permit revocation of conditional release pursuant to the
19 provisions of paragraph VIII.

20 II. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be
21 entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing,
22 the person be:

23 (a) Released on his or her personal recognizance or upon execution of an unsecured
24 appearance bond, pursuant to the provisions of paragraph III;

25 (b) Released on a condition or combination of conditions pursuant to the provisions of
26 paragraph III; or

27 (c) Detained.

28 III. When considering whether to release or detain a person, the court *and, if applicable,*
29 *a bail commissioner* shall consider the following issues:

30 (a) Safety of the public or the defendant.

31 (1) *Except as provided in RSA 597:1-c, a person who is charged with*
32 *homicide under RSA 630; first degree assault under RSA 631:1; second degree assault*

1 *under RSA 631:2; domestic violence under RSA 631:2-b; aggravated felonious sexual assault*
2 *under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping under RSA*
3 *633:1; stalking under RSA 633:3-a; trafficking in persons under RSA 633:7; robbery under*
4 *RSA 636:1, III; possession, manufacture, or distribution of child sexual abuse images under*
5 *RSA 649-A; or computer pornography and child exploitation under RSA 649-B; shall not be*
6 *brought before a bail commissioner and shall, upon arrest, be detained for a period of not*
7 *more than 36 hours from the time of his or her arrest, excluding Saturdays, Sundays and*
8 *holidays.*

9 (2) If a person is charged with any *other* criminal offense, an offense listed in RSA
10 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged
11 with a violation of a protective order issued under RSA 173-B, the court may order preventive
12 detention without bail, or, in the alternative, may order restrictive conditions including but not
13 limited to electronic monitoring and supervision, only if the court determines by clear and convincing
14 evidence that release will endanger the safety of that person or the public. In determining whether
15 release will endanger the safety of that person or the public, the court may consider all relevant
16 factors presented pursuant to paragraph IV.

17 2 Effective Date. This act shall take effect January 1, 2023.

UNAPPROVED

2022-1613s

AMENDED ANALYSIS

This bill lists certain offenses which, if committed by the defendant, create a rebuttable presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

UNAPPROVED

Amendment to HB 1476-FN

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

2

3 AN ACT relative to release of a defendant pending trial.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, I-III(a) to
8 read as follows:

9 597:2 Release of a Defendant Pending Trial.

10 I. Except as provided in paragraph *III or VI*, upon the appearance before the court of a
11 person charged with an offense, the court shall issue an order that, pending arraignment or trial, the
12 person be:

13 (a) Released on his or her personal recognizance or upon execution of an unsecured
14 appearance bond, pursuant to the provisions of paragraph III;

15 (b) Released on a condition or combination of conditions pursuant to the provisions of
16 paragraph III;

17 (c) Detained; or

18 (d) Temporarily detained to permit revocation of conditional release pursuant to the
19 provisions of paragraph VIII.

20 II. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be
21 entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing,
22 the person be:

23 (a) Released on his or her personal recognizance or upon execution of an unsecured
24 appearance bond, pursuant to the provisions of paragraph III;

25 (b) Released on a condition or combination of conditions pursuant to the provisions of
26 paragraph III; or

27 (c) Detained.

28 III. When considering whether to release or detain a person, the court *and, if applicable,*
29 *a bail commissioner* shall consider the following issues:

30 (a) Safety of the public or the defendant.

31 (1) *Except as provided in RSA 597:1-c, a person who is charged with*
32 *homicide under RSA 630; first degree assault under RSA 631:1; second degree assault*

1 *under RSA 631:2; domestic violence under RSA 631:2-b; aggravated felonious sexual assault*
2 *under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping under RSA*
3 *633:1; stalking under RSA 633:3-a; trafficking in persons under RSA 633:7; robbery under*
4 *RSA 636:1, III; possession, manufacture, or distribution of child sexual abuse images under*
5 *RSA 649-A; or computer pornography and child exploitation under RSA 649-B; shall not be*
6 *brought before a bail commissioner and shall, upon arrest, be detained for a period of not*
7 *more than 36 hours from the time of his or her arrest, excluding Saturdays, Sundays and*
8 *holidays.*

9 (2) If a person is charged with any *other* criminal offense, an offense listed in RSA
10 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged
11 with a violation of a protective order issued under RSA 173-B, the court may order preventive
12 detention without bail, or, in the alternative, may order restrictive conditions including but not
13 limited to electronic monitoring and supervision, only if the court determines by clear and convincing
14 evidence that release will endanger the safety of that person or the public. In determining whether
15 release will endanger the safety of that person or the public, the court may consider all relevant
16 factors presented pursuant to paragraph IV.

17 2 Effective Date. This act shall take effect January 1, 2023.

2022-1686s

AMENDED ANALYSIS

This bill lists certain offenses which, if committed by the defendant, create a rebuttable presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

Sen. Bradley, Dist 3
May 4, 2022
2022-1941s
04/05

Floor Amendment to HB 1476-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, I-III(a) to
4 read as follows:

5 597:2 Release of a Defendant Pending Trial.

6 I. Except as provided in paragraph *III or VI*, upon the appearance before the court of a
7 person charged with an offense, the court shall issue an order that, pending arraignment or trial, the
8 person be:

9 (a) Released on his or her personal recognizance or upon execution of an unsecured
10 appearance bond, pursuant to the provisions of paragraph III;

11 (b) Released on a condition or combination of conditions pursuant to the provisions of
12 paragraph III;

13 (c) Detained; or

14 (d) Temporarily detained to permit revocation of conditional release pursuant to the
15 provisions of paragraph VIII.

16 II. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be
17 entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing,
18 the person be:

19 (a) Released on his or her personal recognizance or upon execution of an unsecured
20 appearance bond, pursuant to the provisions of paragraph III;

21 (b) Released on a condition or combination of conditions pursuant to the provisions of
22 paragraph III; or

23 (c) Detained.

24 III. When considering whether to release or detain a person, the court *and, if applicable,*
25 *a bail commissioner* shall consider the following issues:

26 (a) Safety of the public or the defendant.

27 (1) *Except as provided in RSA 597:1-c, a person who is charged with*
28 *homicide under RSA 630; first degree assault under RSA 631:1; second degree assault*
29 *under RSA 631:2; domestic violence under RSA 631:2-b; aggravated felonious sexual assault*
30 *under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping under RSA*
31 *633:1; stalking under RSA 633:3-a; trafficking in persons under RSA 633:7; robbery under*
32 *RSA 636:1, III; possession, manufacture, or distribution of child sexual abuse images under*

1 *RSA 649-A; or computer pornography and child exploitation under RSA 649-B; shall not be*
2 *brought before a bail commissioner and shall, upon arrest, be detained pending*
3 *arraignment before the court. Arraignment shall occur no later than 24 hours after the*
4 *arrest, Saturdays, Sundays, and legal holidays excluded, or no later than 36 hours after*
5 *arrest if arrested between 8:00 a.m. and 1:00 p.m. and the person's attorney is unable to*
6 *attend an arraignment on the same day, Saturdays, Sundays, and legal holidays excluded.*
7 *At the person's appearance before the court, the court shall order that the person be*
8 *detained pending trial if the court determines by clear and convincing evidence that*
9 *release of the person is a danger to the public or themselves. In determining whether*
10 *release will endanger the safety of that person or the public, the court may consider all*
11 *relevant and material factors presented pursuant to paragraph IV. If the court does not*
12 *find by clear and convincing evidence that the person must be detained, the court shall*
13 *order the person released pursuant to paragraph I(a) or paragraph I(b), or, if applicable,*
14 *temporarily detained pursuant to paragraph I(d).*

15 (2) If a person is charged with any *other* criminal offense, an offense listed in RSA
16 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged
17 with a violation of a protective order issued under RSA 173-B, the court may order preventive
18 detention without bail, or, in the alternative, may order restrictive conditions including but not
19 limited to electronic monitoring and supervision, only if the court determines by clear and convincing
20 evidence that release will endanger the safety of that person or the public. In determining whether
21 release will endanger the safety of that person or the public, the court may consider all relevant
22 factors presented pursuant to paragraph IV.

23 2 Effective Date. This act shall take effect January 1, 2023.

Floor Amendment to HB 1476-FN
- Page 3 -

2022-1941s

AMENDED ANALYSIS

This bill lists certain offenses which, if committed by the defendant, create a presumption that a defendant is a danger to the public and shall be detained for up to 36 hours.

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: March 23, 2022

HEARINGS

Tuesday	03/29/2022	
(Day)	(Date)	
Judiciary	State House 100	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m.	HB 1067-FN	relative to limitations on prosecution for first degree assault.
1:15 p.m.	HB 1335-FN	relative to the parole board and the procedure for medical parole of prisoners.
1:30 p.m.	HB 1476-FN	relative to persons arrested while out on bail.
1:45 p.m.	HB 1360-FN	relative to penalties for controlled drug violations.
2:00 p.m.	HB 1597-FN	permitting arraignments for felonies and preliminary examinations to be heard in circuit court.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1067-FN

Rep. Abramson

HB 1335-FN

Rep. Murphy

Sen. Rosenwald

HB 1476-FN

Rep. Berry

Rep. Burt

HB 1360-FN

Rep. Roy

HB 1597-FN

Rep. Gordon

Rep. Marsh

Rep. Alexander Jr.

Rep. Long

Rep. Bordenet

Rep. Steven Smith

Sen. Carson

Rep. Ankarberg

Rep. McLean

Rep. M. Smith

Sen. Sherman

Rep. Hamer

Sen. Soucy

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee
Jennifer Horgan 271-7875

HB 1476-FN, relative to persons arrested while out on bail.

Hearing Date: March 29, 2022

Time Opened: 1:49 p.m.

Time Closed: 3:35 p.m.

Members of the Committee Present: Senators Gannon, French, Whitley and Kahn

Members of the Committee Absent : Senator Carson

Bill Analysis: This bill provides that a person who commits an offense while on bail shall be detained without bail pending a hearing before a judge.

Sponsors:

Rep. Berry

Rep. Alexander Jr.

Rep. Ankarberg

Rep. Hamer

Rep. Burt

Rep. Long

Rep. McLean

Who supports the bill: 10 people signed up in support of the bill. Full sign in sheet available upon request.

Who opposes the bill: 121 people signed up in opposition to the bill. Full sign in sheet available upon request.

Who is neutral on the bill: 2 people signed up neutrally to the bill. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Berry

- This bill makes no changes to the existing statute for people who are arrested while not out on bail.
- If an individual is arrested while out on bail, under this bill they may not go before a bail commissioner, they must go before a judge.
- There is this small set of people (3%-6%) who are being arrested again and again and keep getting released on personal recognizance (PR) bail.
- Those people are being released into our community, they are reoffending, and often the bail commissioners are letting them out before the police finish their reports.
- In the current system, the judges blame the bail commissioners, and the bail commissioners blame the judges for their instruction of the law for these problems.

- If you are being arrested multiple times in a short amount of time, there is something not going well in your life such as homelessness, substance misuse, etc.
- A judge has discretion to set the amount for bail, but it cannot be zero.
- If there are issues with the judges, we have an internal system to hold them accountable.
- Compromised on class B misdemeanors because they do not hold the penalty of jail time.
- There are serious class B misdemeanors like DWI.
- In the bill, if a person is committing a class B misdemeanor, they can be arrested three times while on bail and then this kicks in.
- The existing allowed hold time for someone who is arrested is 72hours.
- To address the concerns of holding people without a trial, the bill cuts that time down to 36hours.
- No one from the Court system said that change would be a problem.
- This will act as a deterrent to individuals who may say 'maybe I won't go commit that third offense.'
- It is very hard for the House to pass bail reform.
- This bill ended up passing with bipartisan support by six votes. Asked that the bill not be amended.
- Senator Whitley asked if he looked at the data regarding how communities of color are disproportionately impacted by this kind of legislation.
 - The 36-hour hold was a consideration of that. This is about getting an individual in front of the judge, so that if anyone is being targeted by the police for any reason, then the judge can do something. The bail commissioner cannot do anything in that situation.
- Senator Whitley asked if the legislature has a role in addressing that issue and not simply leaving this to the judiciary.
 - That is what this bill is. The legislature sets the law, and the judiciary has to enforce it. Judges have an internal system for holding each other accountable.
- Senator French asked how long it is on average between the first arrest to the trial date being set.
 - Would defer to the Judicial Branch on that.
- Senator French pointed out that it could be months between arrest and bail.
 - It could. This is shortening the amount of time a person can be held.
- Senator Kahn asked about the timeframe for the class B misdemeanors.
 - This impacts the third offense when an individual is already out on bail. This is a short period of time and three arrests while out on bail is a lot of arrests.
- Senator Kahn asked if a class B misdemeanor has no holding period currently.
 - Currently, a person can be arrested for a class B misdemeanor and held for 72hours. Many class B misdemeanors result in only a summons or a

citation. There are serious class B misdemeanors such as driving while intoxicated.

- Senator Whitley asked if currently a person can be released by a bail commissioner, but under this bill there is a mandatory hold.
 - No. Currently, the State is allowed to hold a person for a max of 72hours. This bill cuts it that to 36hours. That is a nod to civil liberties, it does not change what you can be arrested for.
- Senator Gannon asked if bail commissioners are lacking ability or training to manage this currently.
 - Has tried to address the deficiencies with bail commissioners, but there was no interest in the legislature to do that. Bail commissioners are trying to take their direction from the judges and it ends up in this blame cycle. Judges have been through legal training, have expanded powers in terms of release, and they are far more able to manage this.

Chief Joe Hoebeke and Assistant Chief Steve Mangone (NH Association of Chiefs of Police)

- Supports SB294 because it addresses the issues of violent repeat offenders and how to remedy many of the situations that have occurred since bail reform was implemented.
- There have been instances of people being arrested for violent crimes and they are being released on PR bail only to go and reoffend.
- Does not support the deprivation of bail for people but does support accountability for individuals who engage in violent criminal activity.
- There are circumstances where a judge is best suited to make a determination on bail.
- Feels it is a stretch to specifically connect lower crime rates with bail reform.
- Crime data shows that we were already on a downward trend in terms of violent crime prior to 2018 across the country.
- Believes improvements in policing have played a role in those downward trends.
- Believes in individual rights, including the rights of the accused. However, also believes in the rights of the victims.
- We need to start thinking about victims of crimes.
- There are instances since 2018 where violent offenders were released on PR bail by bail commissioners.
- Senator Whitley asked if this bill is not simply addressing those violent offenses, but also victimless crimes.
 - Chief Hoebeke agrees that the language in the bill is quite broad and that is why the Chiefs supported SB294 as it specifically targets violent repeat offenders. This could be problematic to the Courts in terms of those engaged in non-violent misdemeanor level offenses being held for 36hours before seeing a judge.
- Senator French asked if SB294 helps law enforcement.
 - Chief Hoebeke answered 'yes'.

- Senator French asked if the passage of SB294 would make this bill unnecessary.
 - Chief Hoebeke stated that he appreciates the sponsor's efforts and his intent. Personally, would prefer SB294.

Stephen Endres (Merrimack County Attorney's Office)

- When a person is arrested by the police, a clock begins to tick where police have to bring someone in front of a judge.
- A bail commissioner can choose to hold a person on preventive detention/cash bail or release them.
- If someone is released on PR bail, they are given a court date and the person will walk out of the police station.
- If the person is held by the bail commissioner, they would have a hearing within the next 24-36hours.
- At that hearing the judge would set bail based on the criteria set out in RSA 597:2, being a risk of flight or danger to the community.
- Within RSA 597:2 there is a provision on risk of flight with the factor of whether the individual was on bail at the time of the offense. That fact creates a presumption that you may not follow court orders in the future.
- This bill addresses a small subset of people who are out on bail and get arrested, people on probation who get arrested, or people that are on parole and get arrested.
- Under this bill, those people would be held to go in front of a judge within the next 24-36hours.
- Does not believe this creates any due process issues because the individual is being brought before a judge instead of the bail commissioner.
- This would result in the same number of arraignments.
- Whether someone is arrested and held or arrested and released both still have to go to court for an arraignment.
- This would change the timeframe of the arraignment and may make it happen sooner, but it does not create additional hearings.
- Those arraignments already happen every day, and the circuit courts are equipped to deal with them.
- If the small group this impacts overwhelms the Courts then that means there are a lot of people in the State who are committing crimes when they are on probation, parole, or bail, and that should be a concern.

Summary of testimony presented in opposition:

Ross Connelly (Americans for Prosperity)

- This bill treats all offenses as equally serious, and it removes the ability of justice system to give discretion on a case by case basis.
- Understands the concerns regarding those accused of violent crime being released, but there is already a way to address that in statute.
- Has proposed language in the House to further clarify the current statute, but those changes were not adopted.

- Most second offenses are low level violations, including simple cannabis possession over the decriminalized limit.
- The immediate effect of this bill would be the recriminalization of poverty.
- A defendant should not be detained simply because they cannot afford bail.
- The amended version of the bill needs to be clarified as there is confusion with the third offense class B misdemeanor in where it is placed and how it is worded.
- It is better to say more explicitly what the intent is, so that there would be no confusion in the application of the law
- Senator Whitley asked what the thought process is for why Americans for Prosperity wanted to be involved in the bill.
 - The organization was in support of the 2018 bail changes. Believes they largely have been working and crime has reduced since the passing of that law. This is about personal liberty and due process, which is fundamental. This bill would roll back a lot of those protections that were accomplished in 2018.

Frank Knaack (ACLU) (provided written testimony)

- This bill changes a 'may' to a 'shall' regarding whether individuals are detained.
- Current law says someone 'may be detained for 72hours', while under this bill they 'shall be detained for 36hours.'
- Core Correction Solutions reviewed that when nearly 1.5 million people in Kentucky were incarcerated for three days between 2009 and 2018 there was a net public safety harm.
- Their newest data looked again at 1.5million people held for 24 hours and it resulted in the net public safety harm.
- These findings are consistent with decades of research on the effects of custodial sanctions.
- One of the report's recommendations was "In most instances, jail is likely the most harmful option during the pretrial stage."
- Research shows we should be more focused on treatment and support.
- Under existing law, anyone can be held pretrial if they are danger to the community.
- Provided 2018-2020 crime data that shows since bail reform passed group A crimes are down 14.3% and arrests are down 22.6%; for group B, arrests are down 20%.
- In Manchester, group A crimes are down 9.6% and arrests are down 16.6%; for group B, arrests are down 30%.
- In Bedford, group A crimes are down 29.5% and arrests are down 19.5%; group B has had no change.
- The idea that bail reform has made our communities less safe has no data to support it.
- Black people in 2020 were 3.2 times more likely to be arrested than white people.

- Black people are 4.8 times more likely to be arrested for marijuana possession, 5.9 times more likely to be arrested for disorderly conduct, and 6.52 times more likely to be arrested for vagrancy.
- A mandatory incarceration scheme is going to further entrench the already disproportionate incarceration of Black people in our State.
- Senator Whitley asked about the claim that the 36hour change will make this better than current law.
 - The bill does reduce the whole time from 72hours to 36hours. Currently, incarceration is discretionary and under this bill it becomes a mandatory hold. With this bill, all people would be mandatorily held, whereas currently bail commissioners can release individuals on PR bail.
- Senator Whitley asked if this would mandate pre-trial incarceration just because of a previous charge.
 - Yes.
- Senator Whitley asked if it would mandate pre-trial incarceration even if the underlying charge does not require jail time.
 - Correct. Because this pulls PR bail as an option, people who cannot afford their bail, even if it is on a class B misdemeanor, will be held.
- Senator Whitley asked if this is bringing back the criminalization of poverty.
 - Absolutely.
- Senator French noted that the police end up arresting the same person hour after hour. Asked if in trying to address that with this bill, it will grab a lot of other cases that are not problematic to the departments.
 - Absolutely because this is a one size solution. Jails are the worst solution for mental health and substance misuse problems. When you are held pre-trial, you are not even eligible for services.

Melissa Davis (Association of Criminal Defense Lawyers)

- This is unnecessary and has the potential to be very taxing on the Court system and harmful to citizens.
- The currently available system already provides the protections that are being proposed.
- Has cases that have been sitting for months and years waiting for trial dates, and they are being continued because the Court has to cancel and delay trial dates for other matters that have time requirements.
- This would additionally tax the overstressed criminal defense system.
- The bail statute requires bail commissioners to be trained by the Court in the same way that judges are trained under RSA 597:18 (a).
- Prosecutors are already able to address bail violations.
- Under RSA 597 an individual can be brought forward for breach of bail conditions.
- Prosecutors can file motions to revoke bail under RSA 597:2.

- Most often, the people who are being repeatedly arrested are those suffering from substance misuse disorders. This is an epidemic that has only gotten worse.
- Judges can educate bail commissioners on drug use disorders.
- The judicial system is trying to get people into treatment and in a place of sobriety, but they cannot do that often times when people are sitting in jail.
- Senator Kahn asked if that first 24 hours after an incident is where the efforts for alternative work and treatment ought to be focused as opposed to incarceration.
 - Yes, science shows immediate intervention is going to be the most effective and delayed intervention with incarceration is going to be harmful. This kind of incarceration is concerning for individuals who are engaged as medically assistive treatment. If someone is not allowed PR bail, the judges will default to low level cash bail. This will impact low-income individuals and incentivize individuals held on even minimal manners to resolve cases quickly, even if they would be entitled to fight their case in court, simply because they want to get out of jail.
- Senator Whitley asked if the reason for the decrease in incarcerations is because we are rebuilding the State's substance misuse treatment and mental health treatment programs.
 - Would agree with that.
- Senator Whitley asked if the actual solution for addressing these reoffenders is to get them into treatment rather than incarcerating them.
 - Correct.
- Senator Whitley asked if interrupting that treatment is likely to have a detriment to public safety.
 - Yes
- Senator Gannon asked if it not necessarily bail reform that has helped crime statistics decrease but could instead be something like better policing.
 - The numbers decreasing is likely due to a number of factors. The increasing realization, that we need to treat people with a substance misuse disorder medically rather than punitively, has impacted the decrease in crime.
- Senator Whitley asked if it is true that bail reform is not responsible for making our communities less safe.
 - Thinks that is correct. Her experience is that people out on bail are much better able access the types of things that will make long term change. They are able to access housing, treatment, and more. It allows for the ability to improve while on bail, especially when there are parameters assisting them.

Grace Kindeke (American Friend Service Committee)

- This bill will impact Black Granite Staters.

- Works with Manchester Community Action Coalition, which creates services and programs that support BIPOC community members.
- Has seen what poverty, lack of access to care, treatment, and basic supports has done and continues to do in devastating the community.
- Knows that in order to address these long-standing issues have to address the root causes.
- Understands the concern about people who are reoffending, and there are serious safety issues in NH.
- Manchester has the poorest census tracks in the country; sees the effects of that in the children in after school programs, in the families they work with, and in the youth struggling to find a place where they can land.
- There is a downward trend in crime, and believes it is partly due to the work of community organizations.
- The rate criminal law is enforced on Black and brown people is disproportionate to the numbers of Black and brown people in the State.
- Jail time does not address the problems that cause people to reoffend over and over again.
- We need to see this as a complex problem that requires complex solutions.
- This bill would devastate Black, brown, and low-income people in the State.
- This bill is not going to mitigate re-offense, it is going to ensure those who cannot afford bail are going to continue to not be able to get the support that they need in order to rehabilitate.
- Senator French asked how this would affect the Black community more than the entire State.
 - This would affect the Black community disproportionately. Looking at the proportion of Black people in NH and the rate that Black people are criminalized, incarcerated, and charged for crimes it is disproportionate. There are disproportionate impacts on other brown communities as well.
- Senator French asked for those numbers
 - Believes the ACLU provided that in their testimony. If not would be happy to email them to the Committee.
- Senator Gannon asked if it is not racism at play, but the fact that communities in the city are more visible in their actions to the police than individuals in more rural areas.
 - Yes, but. Manchester is very diverse, and a lot of Black and brown community members live in the center of the city, which is where the majority of police patrols happen. The fact that these activities are happening in front of police is a part of it, but the data does show that the Black community members who are experiencing the same charges as others, have consequences that are disproportionate in comparison.
- Senator Gannon asked if the proportions of arrests in Manchester, minority to white are disproportionate.

- Does not know the exact amount but would be happy to get. There is a disproportionate impact within the city itself.

Buzz Schear

- Does not think anyone claims that bail reform is the cause for the drop in the rate of crime.
- Even assuming the trend was already downward, with bail reform the trend did not go up or stop going down.
- There is no evidence that bail reform had a negative effect on public safety.
- Bail reform has had a dramatic effect on the rate of pretrial incarceration.
- In Hillsborough County jail the number of people being held on less than \$1,000 bail on October 1, 2018, was over 170; a year later it was seven people.
- Bail reform has resulted in some cost savings and a de-incarceration rate.
- This will result in more hearings.
- If someone is arrested for a misdemeanor after being out on PR bail, this bill mandates that person be held for 36 hours, rather than a bail commissioner letting them out on PR bail.
- Every single person getting charged after they are already out will get a hearing.
- The original purpose of bail reform was to not put people in jail just because they are poor.
- Under the current law, people charged with misdemeanors will get a hearing, and the bill says the judge cannot grant PR bail at that point.
- The judge under this bill will then set a cash amount and those people who cannot afford the bail will end up back in jail.
- The simple solution is to change the bill to only apply those people who we are truly concerned about, those charged with homicide, first degree assault, second degree assault, and felony sexual assault. That will cure the huge majority of the problems with the bill.
- SB92 tried to do a lot more than what this bill tries to accomplish, and it got tabled because it had a host of issues that caused concern.
- Senator Kahn asked for a written amendment
 - Will provide that to the Committee.

Len Harden (NH Association of Criminal Defense Lawyers)

- Reiterated Ms. Melissa Davis' testimony.
- When an individual is incarcerated, it is difficult for the family and lawyers to reach defendants.
- From a grassroots fundamental basis, it is difficult to access resources or do anything with a defense lawyer when a defendant is incarcerated.
- An individual is completely disempowered when they are incarcerated.
- The Court backlog is anywhere from four to six months from time of arrest to trial.
- There is a disproportionate racial impact with regard to these kinds of bills.

- Works in the North Country, which has the least diverse population in the State.
- Anecdotally, has witnessed more arrests of people of color.
- Senator Gannon asked about changing the language to only impact those violent crimes.
 - Less willing to amend it. As Attorney Davis pointed out there are remedies already in place, such as filing for breach of bail or revoking bail. If someone is dangerous, they will be detained. This is trying to fix a problem that is not worthy of fixing. Thinks that amendment would make the bill better but would not support it, because what we have works.

Neutral Information Presented:

Richard Head (Judicial Head)

- No position on the policy of the bill but has significant concerns as to the impact on the circuit courts in terms of this and a number of other bills.
- The Senate has passed SB294 on bail reform and there are several bills coming over to the Senate from the House.
- There has not been a lot of consideration as to the impact these bills all being implemented would have on the already strained circuit court.
- The circuit court is made up of the family, district, and probate divisions, and the judges sit on all three.
- There are approximately 125,000 cases being filed annually in the circuit court, with about 150,000 hearings every year.
- Bail hearings are very difficult to schedule because it has to be done on Monday mornings. The clerks must get paperwork in front of the judge, the judge to hear it, and more.
- These are also incarcerated bail hearings, meaning that there is coordination with the county jail to ensure that person is in front of the video on time.
- It is a very precise and difficult form of scheduling.
- Adding the bail hearings that are currently being managed by bail commissioners would have a significant impact.
- In 2019, the circuit court managed 35,000 felonies and misdemeanors.
- This bill would impact every individual from the time of their arrest to when the sentence was completed.
- Does not know how many people are in that pool.
- In any particular year there are about 8,700 are felonies, and roughly 13,000 class A misdemeanors and roughly 13,000 class B misdemeanors.
- It is roughly 5.8 minutes per hearing.
- With 7.5-hour days, that would mean there would be 13 full days of hearings with the 3%.
- 6% would result in 27 days of hearings.
- This is already a very stressed system.
- This bill bypassed House Finance.

- The judicial system does not have enough public defenders, there is a pandemic backlog, and the system is very stressed.
- This Session is considering adding a lot of new stuff to the circuit court.
- If too many bills like this move forward the cases that do not have deadlines are going to get pushed, like civil, parenting, small claims, etc.
- Line 19 says the Court shall not order PR bail in such cases.
- If PR bail is not available, the Courts then potentially have to appoint council which would also be a delay the process.
- In 2021 on average, class A misdemeanors took 178 days to disposition, class B misdemeanors took 139, and violations took 116 days.
- If this bill goes forward the effective date is 60 days from passage. RSA14:9 states that any law affecting judicial practice or procedure shall have an effective date of January 1 of the following year.
- Over time the Courts have reduced staff; some of that is in response to budget requests, errors in estimation regarding e-court, and more.
- Senator Whitley stated that SB294 was estimated to cost \$1.9million annually to implement it in terms of additional judges and support staff. Asked if this bill would have a similar cost.
 - With SB294 bill the Judicial Branch was able to go into the data and determine a more accurate estimate. Does not have the data on second arrests, so it's tough to estimate. The Branch was not asked to do a fiscal note worksheet on this bill. None of these bills that are coming forward are being considered in terms of that ripple effect.
- Senator Whitley asked if there would also be an increased cost to the counties under this.
 - Assumes there would be additional costs to them in terms of holding individuals in jails and sheriffs transporting individuals.
- Senator Kahn asked if changing the holding time to 36hours is going to be a problem.
 - Is not sure how the 36hours is going to impact the system. It is still the same number of cases going to the circuit court. The House amendment did carve out class B misdemeanors, reducing from what the original bill was.
- Senator Kahn asked if this bill would result in more people being held and what the cost to the counties would be.
 - That seems to be the goal of the bill. The counties did put in an FN on the bill that stated that the increase to the cost would be indeterminable.
- Senator Kahn asked if he had any recommendations on how to ease the burden on the Court.
 - No recommendations, but strongly requests consideration of what will happen if all of these bills are passed: SB294, this bill, Felonies First, and half a dozen bill from House Children and Family Law.

- Senator Kahn asked what the Judicial Branch would need to implement these bills.
 - Would need more staff, judges, public defenders; more of everyone involved in supporting the system.

Sarah Blodgett (Judicial Council)

- Everyone is aware of the crisis with indigent defense.
- The reality is that we are unable to provide lawyers immediately for every incarcerated defendant.
- Any increase in the number of people being detained for a class B misdemeanor is going to add to this burden.
- Indigent defense is only appointed to class B misdemeanors in very specific circumstances, but if someone is detained, an attorney would need to be appointed to represent them.
- The system cannot accommodate any additional incarcerated client representation.
- Senator Whitley asked if public defenders does not only represent individuals for their bail hearing.
 - Our system does not operate that way. May have one attorney that argues bail but when an individual gets court appointed counsel, that is the counsel until the resolution.
- Senator Whitely asked if this bill would mean caseloads will be even heavier on an already stressed system, and that this is actually a constitutional issue.
 - Yes. The Judicial Council was not given an opportunity to provide a fiscal worksheet on this bill. Not sure if there was a need with the original version, but under this version there would be a significant impact.
- Senator Kahn asked if there 800 cases waiting assignment from the Public Defender's Office.
 - That number has increased since last week. Right now, the priority is for incarcerated individuals. If someone is incarcerated, they are not on that hold list. When getting a new incarcerated defendant, it is an incredible challenge to find someone to take that case.
- Senator Kahn asked if those incarcerated individuals would include those charged with class B misdemeanors.
 - Very few people who are currently being held on a class B misdemeanor are amongst the Indigent Defense Fund's clients.
- Senator Kahn asked what the current backlog is.
 - It is approaching 900.
- Senator Kahn asked what the current staff numbers are.
 - There are 137 attorneys on staff. Between the contract attorneys and the assigned counsel who have been taking cases there are about 85.
- Senator Kahn asked how long it would take to clear the backlog.
 - It will take a significant amount of time. Could not hazard a guess at this time.

Date Hearing Report completed: April 2, 2022

Speakers

Senate Judiciary Committee

SIGN-IN SHEET

Date: 03/29/2022 Time: 1:30 p.m.

HB 1476- AN ACT relative to persons arrested while out on bail.
FN

Name/Representing (please print neatly)

Name/Representing	Support	Oppose	Speaking?	Yes	No
^{Major} Joseph M. Ebert NH State Police	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Richard Head Judicial Branch	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ken Hardin NH ACDL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Connolly AFD NH	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRANK KNAACK ACLU-NH	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JOSEPH BEBEIKE / STEVE MANGONE NHACOP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Melissa Davis NH AEDC	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stewart Endres	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sarah Blodgett Judicial Council / no position	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ophelia Barcott	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AMARON STROUD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Ross Perry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
GRACE KENNEDY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brian [unclear]	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>

Senate Remote Testify

Judiciary Committee Testify List for Bill HB1476 on 2022-03-29

Support: 6 Oppose: 113

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Bates, David	A Member of the Public	Myself	Oppose
Jadcak, Deborah	A Member of the Public	Myself	Oppose
anastasia, patricia	A Member of the Public	Myself	Oppose
Courser, Jennifer	A Member of the Public	Myself	Oppose
Brown, Ellie	A Member of the Public	Myself	Oppose
Neubieser, JF Carter	A Member of the Public	Myself	Oppose
O'Brien, Lily	A Member of the Public	Myself	Oppose
Murray, Grace	A Member of the Public	Myself	Oppose
Carr, Ruby	A Member of the Public	Myself	Oppose
Kremer, Ben	A Member of the Public	Myself	Oppose
Alberga, Jacob	A Member of the Public	Myself	Oppose
Kasten, Sayles	A Lobbyist	New Hampshire Youth Movement	Oppose
Anderson, Ryann	A Member of the Public	Myself	Oppose
Perez, Erika	A Lobbyist	Myself	Oppose
Farley, Jude	A Member of the Public	Myself	Oppose
Ford, Eva	A Lobbyist	Myself	Oppose
Ross, Ashley	A Member of the Public	Myself	Oppose
Brown, Joseph	A Member of the Public	Myself	Oppose
bory, lee	A Member of the Public	Myself	Oppose
Campbell, Karen	A Member of the Public	Myself	Oppose
Kidder, Steven	A Member of the Public	Myself	Oppose
Smith, Jennifer	A Member of the Public	Myself	Oppose
King, Jordan	A Member of the Public	Myself	Oppose
Reed, Judith	A Member of the Public	Myself	Oppose
Horgan, Kate	A Lobbyist	NH Association of Counties	Support
Baker, Deb	A Member of the Public	Myself	Oppose
Yen, Lidia	A Member of the Public	Myself	Oppose
Reid, Lucinda	A Member of the Public	Myself	Oppose
QUISUMBING-KING, Cora	A Member of the Public	Myself	Oppose
Torpey, Jeanne	A Member of the Public	Myself	Oppose
Burr, Emily	A Member of the Public	Myself	Oppose
LaPointe, Susan	A Member of the Public	Myself	Support
Blair, David	A Member of the Public	Myself	Oppose
perencevich, ruth	A Member of the Public	Myself	Oppose
Dewey, Karen	A Member of the Public	Myself	Oppose
Hackmann, Kent	A Member of the Public	Myself	Oppose
Feder, Marsha	A Member of the Public	Myself	Oppose
Corell, Elizabeth	A Member of the Public	Myself	Oppose
Brennan, Nancy	A Member of the Public	Myself	Oppose
Lynch, Chrisinda	A Member of the Public	Myself	Oppose
Fudge, Kim Marie	A Member of the Public	Myself	Oppose
Spencer, Louise	A Member of the Public	Myself	Oppose
Hershey, Jane	A Member of the Public	Myself	Oppose
Merlone, Lynn	A Member of the Public	Myself	Oppose
Thomas, Anne	A Member of the Public	Myself	Oppose
Martin, Patricia	A Member of the Public	Myself	Oppose
Beaudoin, Jennifer	A Member of the Public	Myself	Oppose

McNeill, Jefferson	A Member of the Public	Myself	Oppose
Powell, Francis	A Member of the Public	Myself	Oppose
Setzler, Jamie	A Member of the Public	Myself	Oppose
Allard, Heather	A Member of the Public	Myself	Oppose
Eltringham, Daniel	A Member of the Public	Myself	Oppose
Moyer, Valerie	A Member of the Public	Myself	Oppose
Fogarty, Sean	A Member of the Public	Myself	Oppose
Cardona, Carlos	A Member of the Public	Myself	Oppose
Schmidt, Madeleine	A Member of the Public	Myself	Oppose
Allen, Claire	A Member of the Public	Myself	Oppose
Goodrow, Carolyn	A Member of the Public	Myself	Oppose
Kindeke, Grace	A Lobbyist	American Friends Service Committee	Oppose
Fernandez, Alexandra	A Member of the Public	Myself	Oppose
Gale, Sophia	A Member of the Public	Myself	Oppose
O'Neill, Faye	A Member of the Public	Myself	Oppose
Wilson, Olivia	A Member of the Public	Myself	Oppose
Pirkey, Andrea	A Member of the Public	Myself	Oppose
Carter, Eliza	A Member of the Public	Myself	Oppose
Hurley, Maryann	A Member of the Public	Myself	Oppose
Oliver, Hannah	A Member of the Public	Myself	Oppose
Houle, Autumn	A Member of the Public	Myself	Oppose
Montminy, Sandra	A Member of the Public	Myself	Oppose
Allen, Anna	A Member of the Public	Myself	Oppose
allen, karen	A Member of the Public	Myself	Oppose
Bosworth, Thomas	A Member of the Public	Myself	Oppose
Woody, Savannah	A Member of the Public	Myself	Oppose
Painten, Elisa	A Member of the Public	Myself	Oppose
Rouse, Asya	A Member of the Public	Myself	Oppose
Kilpatrick, Jessica	A Member of the Public	Myself	Oppose
Thompson, Kristen	A Member of the Public	Myself	Oppose
Robertson, Elizabeth	A Member of the Public	Myself	Oppose
Graves, Gillian	A Member of the Public	Myself	Oppose
Boudreau, Chandra	A Member of the Public	Myself	Oppose
Arnold, Leah	A Member of the Public	Myself	Oppose
Berk, Bruce	A Member of the Public	Myself	Oppose
Gurung, Manju	A Member of the Public	Myself	Oppose
Horrigan, Rep. Timothy	An Elected Official	Strafford 6	Oppose
Linehan, Meg	A Member of the Public	Myself	Oppose
Sandler, Erin	A Member of the Public	Myself	Oppose
BILLINGHAM, CARLA	A Member of the Public	Myself	Oppose
trojan, abby	A Member of the Public	Myself	Oppose
Tsiopras, Lisa	A Member of the Public	Myself	Oppose
Dolat Bartlett, Rep Christy	An Elected Official	Merrimack County 19	Oppose
Ellermann, Maureen	A Member of the Public	Myself	Oppose
Termini, Marcella	A Member of the Public	Myself	Oppose
GAUDISSERT, Morgane	A Member of the Public	Myself	Oppose
Russo, Susan	A Member of the Public	Myself	Oppose
Mousseau, Cynthia	A Member of the Public	Myself	Oppose
staffiere, zac	A Member of the Public	Myself	Oppose
Fogarty, Maggie	A Lobbyist	American Friends Service Committee - NH Program	Oppose
Durkee, Peyton	A Member of the Public	Myself	Oppose
Milonas, Abby	A Member of the Public	Myself	Oppose
Gordon, Carolyn	A Member of the Public	Myself	Oppose
Boucher, Emily	A Member of the Public	Myself	Oppose
Reams, Mark	A Member of the Public	Myself	Support
Poole, Caitlin	A Member of the Public	Myself	Oppose

Reynolds, Charles	A Member of the Public	Myself	Support
Brunelle, Leigh	A Member of the Public	Myself	Oppose
Roy, Leo	A Member of the Public	Myself	Oppose
Wheeler, Megan	A Member of the Public	Myself	Oppose
Martel, Zoe	A Member of the Public	Myself	Oppose
Cleary, Alexis	A Member of the Public	Myself	Oppose
Ebrahim, Yussra	A Member of the Public	Myself	Oppose
Shagoury, Andrew	A Member of the Public	Myself	Support
Tarleton, Matthew	A Member of the Public	Myself	Support
Introcaso, Paul	A Member of the Public	Myself	Oppose
mcclure, melissa	A Member of the Public	Myself	Oppose
Dean, Paul	A Member of the Public	Myself	Oppose
Nardino, Marie	A Member of the Public	Myself	Oppose
Podlipny, Ann	A Member of the Public	Myself	Oppose
Klipsch, Samantha	A Member of the Public	Myself	Oppose
Istci, Claudia	A Member of the Public	Myself	Oppose

Testimony

Jennifer Horgan

From: Karen Campbell <klynnccampbell50@gmail.com>
Sent: Saturday, March 26, 2022 11:07 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 1476

Dear Senate Committee Members:

I am a constituent from Epsom, NH and I am writing to urge you to oppose HB 1476. My reasons are as follows:

1. Current law already allows the court to detain people pretrial if they are a flight risk or danger to the community. This one-size-fits-all legislation is not appropriate.
2. Proponents of this legislation have provided no data to support their claims that the current bail system makes New Hampshire less safe. In fact, crime rates in NH have decreased over 14 percent since the implementation of bail reform.
3. This legislation will disproportionately harm Black people. New Hampshire's criminal laws are enforced with a racial bias already. Because Black people are disproportionately arrested, they will also be disproportionately incarcerated under this legislation's mandatory incarceration regime.
4. This legislation will set up a new wealth-based incarceration system where those with wealth can purchase their freedom, while those without will stay in jail. This two-tiered justice system should have no place in New Hampshire.
5. This legislation creates a new and unnecessary financial burden on New Hampshire - possibly up to an additional \$1.9 million each year to implement this law.
6. This legislation ignores the work of the bail commission. The Commission's recommendations were passed in 2019 and 2020, resulting in a system that carefully balances the need to protect individual liberty while ensuring the safety of our communities. This legislation reflects none of the recommendations from the Commission and would roll back reforms that reduced unnecessary incarceration and saved the state millions of dollars without jeopardizing public safety.
7. This legislation raises serious constitutional concerns.
8. This legislation flips innocent until proven guilty on its head. This legislation in effect presumes guilt by mandating the detention of individuals based merely on the fact that they were charged with an offense.
9. Pretrial detention has a devastating human toll.

Please vote inexpedient to legislate on HB 1476. It is a bad idea.

Thank you,

Karen Campbell

Jennifer Horgan

From: Judy Reed <jureed@keene.edu>
Sent: Sunday, March 27, 2022 8:07 AM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: Oppose HB 1476 - Keep Bail Decisions in the Hands of the Court.

To Members of the Senate Judiciary Committee:

Please firmly oppose HB 1476.

The U.S. Supreme Court has made clear that individuals cannot be detained pretrial without bail unless there is clear and convincing evidence that they are a danger. Current law already allows the court to detain individuals pretrial if they are a flight risk or danger to the community.

This legislation will expand the criminalization of poverty in New Hampshire. Personal recognizance bail was implemented to ensure that people who could not afford bail could be released, assuming the court did not find them to be a danger or flight risk. Under this proposed legislation, people who are arrested while on pretrial release will be denied personal recognizance bail, thus setting up a new wealth-based incarceration system where those with wealth can purchase their freedom, while those without will stay in jail.

This legislation also creates a heavy and unnecessary financial burden on New Hampshire.

Sincerely,

Judith Reed, Ed.D.
Keene, NH

Jennifer Horgan

From: Trudy Mott-Smith <wmottsm@worldpath.net>
Sent: Sunday, March 27, 2022 8:38 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 1476

Dear Chair Carson and Committee Members,

Please vote against HB 1476.

This bill would undo the 2018 reform passed to prevent incarceration because of poverty.

Current law allows the use of bail to jail people who are a pre-trial flight risk or who are a danger to the public. Because the law makes pre-trial detention permissive and not mandatory, it prevents the use of bail to incarcerate people merely because they can't dig up bail money.

HB 1476 would change that by:

- (1) mandating pretrial incarceration for 36 hours (excluding weekends and holidays) of a person charged with any State or federal felony or Class A misdemeanor done while on release for any offense;
- (2) mandating pretrial incarceration if a person is charged with a third or subsequent Class B misdemeanor; and
- (3) eliminating "personal recognizance" in such cases- which means bail must be imposed.

The bill is not necessary: arrests and convictions decreased after the

2018 reform. Worse, it discriminates against black people because of the generally racially discriminatory pattern of arrests. According to the State's recent data, black people are 6.52 times more likely than white people to be arrested for vagrancy. And, while black and white people consume marijuana at about the same rate, black people are 4.8 times more likely to be arrested for possession than are white people. Under the bill, all these arrests would lead to incarceration with a possible consequent loss of housing and employment.

Sincerely,

Wiltrud R. Mott-Smith, 91 Kenney Road, Loudon, NH 03307

Jennifer Horgan

From: Ruth Heath <ruthmheath@comcast.net>
Sent: Monday, March 28, 2022 1:56 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB1476 Please vote against this

Dear Senators,

I am very disturbed that the bail reforms that were put in place a few years ago would be dismantled by HB1476. The reforms put in place a couple years ago ensured that both poor people and those wealthier can equal access to release. Please vote against HB1476 and ensure fair and equal access to bail for everyone!

Ruth Heath
Canterbury NH

Jennifer Horgan

From: Emilia Toth <emiliatothnhym@gmail.com>
Sent: Monday, March 28, 2022 4:32 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB1476

To the House Judiciary Committee,

My name is Emilia Toth and I'm a resident of Keene, NH, as well as a lobbyist for the New Hampshire Youth Movement. I'm emailing in opposition of HB 1476, which would mandate pretrial incarceration, and prohibit personal recognizance bail, which would call for a person to be held for 36 hours before a hearing with a judge.

This bill would take away basic freedoms for New Hampshire citizens. This would allow for anyone to be incarcerated without an opportunity for bail. This directly counters the US Constitution, which states that individuals can only be held pretrial if there is "clear and convincing evidence" of a threat. This bill would allow for anyone to be held despite the lack of evidence.

Furthermore, this bill directly targets people of color and people of extreme poverty. A racial bias exists in NH's criminal laws, and this would make it much easier for Black people to be held without cause. Additionally, personal recognizance bail was implemented to ensure that people who could not afford bail could be released, and rolling back this bail would put people living in poverty in a very dangerous position. This would allow for a wealth-based incarceration system that would allow for the wealthy to purchase their freedom, while others will be stuck in jail.

I urge you to oppose this bill and allow for anyone to have the freedom to post bail, and stay out of jail unless direct proof of crime is provided.

Thank you so much for the opportunity to email you in opposition of HB1476,
Emilia Toth

Jennifer Horgan

From: Connor Mack <connor.mack1021@gmail.com>
Sent: Thursday, March 31, 2022 4:36 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 1476

My name is Connor Mack, and I am a resident of Dover, New Hampshire. I am writing to you to convey my disapproval of House Bill 1476.

The reasoning behind this law is confusing, as there is no evidence that the New Hampshire bail system makes our communities less safe as it currently stands. This law, if passed, will only restrict the freedom of many New Hampshire residents. The court, not the government, is best able to handle and determine if someone is fit to rejoin society until their court date. This new law will also disproportionately affect people living in poverty. As the law currently stands, if someone cannot afford bail, the court can deem them not a flight risk or danger to society and they can be released until their court date. HB 1476 would prevent this from happening, deepening the already great divide between the wealthy and the working class.

There's also an issue in the fact that over the past few years a lot has changed, for the better, to the bail system. The bail commission, consisting of members holding positions throughout the legal system process, made recommendations that passed in 2019 and 2020 that made our justice system more equitable. This bill completely discounts that work that they did, and the people who made this bill do not have the same qualifications to be making these decisions as those on the bail commission.

Thank you again for considering this letter, and please consider voting against **HB 1476** when you have the opportunity to vote on the bill.

Sincerely,

Connor Mack

87 Portland Ave
Dover, NH
03820

HB 1476-FN - AS AMENDED BY THE HOUSE

15Mar2022... 0895h

2022 SESSION

22-2058

04/11

HOUSE BILL 1476-FN

AN ACT relative to persons arrested while out on bail.

SPONSORS: Rep. Berry, Hills. 44; Rep. Shaw, Hills. 16; Rep. Alexander Jr., Hills. 6; Rep. Ankarberg, Straf. 10; Rep. Hamer, Hills. 17; Rep. Burt, Hills. 39; Rep. Long, Hills. 10; Rep. McLean, Hills. 44

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill provides that a person who commits an offense while on bail shall be detained without bail pending a hearing before a judge.

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.

15Mar2022... 0895h 22-2058

04/11

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to persons arrested while out on bail.

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

1 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, VIII to read as follows:

VIII.(a) A person charged with an offense who is, or was at the time the offense was committed, on release pending trial for ~~homicide, first degree and second degree assault and~~ ~~felony sexual assault~~ felony or misdemeanor under federal or state law, release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under federal or state law; or probation or parole for any offense under federal or state law, except as provided in RSA 597:1-d, III[, may]; ~~or a person charged with a class B misdemeanor, third or subsequent offense,~~ shall be detained for a period of not more than [72] 36 hours from the time of his or her arrest, excluding Saturdays, Sundays and holidays[. The law enforcement agency making the arrest shall notify the appropriate court, probation or parole official, or federal, state, or local law enforcement official. Upon such notice, the court shall direct the clerk to notify by telephone the department of corrections, division of field services, of the pending bail hearing. If the department fails or declines to take the person into custody during that period, the person shall be treated in accordance with the provisions of law governing release pending trial. Probationers and parolees who are arrested and fail to advise their supervisory probation officer or parole officer in accordance with the conditions of probations and parole may be subject to arrest and detention as probation and parole violators.] and, notwithstanding paragraph III, shall be held in preventive detention without bail pending a hearing before a judge. The court shall not order personal recognizance bail in such cases.

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

LBA

22-2058

Redraft 11/23/21



Frank Knaack
Policy Director
fknaack@aclu-nh.org
603.545.0433

Oppose HB 1476 – Don’t Needlessly Incarcerate Thousands of Granite Staters and do so at a Staggering Financial Cost

HB 1476 as amended (Amendment 2022-0895h) would mandate the pretrial incarceration of any individual charged with any felony or Class A misdemeanor offense if they were on release for any offense at the time, including a Class B misdemeanor offense that carries no jail time if convicted. As amended, HB 1476 would also mandate the pretrial incarceration of any individual charged with a third Class B misdemeanor offense. In both cases the person would be held for up to 36 hours (excluding weekends and holidays) until a hearing before a judge. Also, as amended, HB 1476 would prohibit personal recognizance bail in such cases, thus ensuring that people without wealth will be incarcerated at least until they plea or go to trial.

This legislation will harm public safety. A recent study by Core Correctional Solutions (funded by Arnold Ventures) that reviewed nearly 1.5 million people booked into jail in Kentucky between 2009 – 2018 found that pretrial detention for any time is associated with a higher likelihood of arrest for a new crime before case disposition.ⁱ As the report noted, these findings are consistent with “decades of research on the effects of custodial sanctions” and “the reality is that getting people out of jail sooner rather than later is better.”ⁱⁱ According to the report’s recommendations, “in most instances, jail is likely the most harmful option during the pretrial stage” and resources focused on treatment and support are far more effective than punishment.ⁱⁱⁱ New Hampshire legislators should oppose this legislation and focus on data-driven solutions to harm in our communities.

Current law already allows the court to detain any individual pretrial if they are a flight risk or danger to the community. Under current law, “[i]f a person is charged with any criminal offense ... the court may order preventive detention without bail.”^{iv} Instead of allowing the court to assess the facts in an individual case, this bill would eliminate the court’s discretion and replace it with a mandatory one-size-fits-all approach that will deprive potentially thousands of Granite Staters of their freedom without any evidence that any of the individuals pose a threat to our communities.^v The court is best equipped to determine who is dangerous and they should retain the power to engage in individualized determinations before depriving someone of their freedom.

This legislation is based in fear, not evidence. Despite the fear-based rhetoric and limited anecdotal stories from some law enforcement leaders, proponents of this legislation have proved no data to support their claims that the current bail system makes New Hampshire less safe. In fact, crime rates in NH have decreased over 14 percent since the implementation of bail reform.^{vi} Legislators should not enact laws that would deprive the freedom of potentially thousands of Granite Staters each year without clear evidence that the incarceration is necessary to protect public safety. The rhetoric in New Hampshire is similar to the rear-based rhetoric coming from opponents of bail reform in New York and Houston, TX, despite data showing that bail reform in those jurisdictions is reducing incarceration without harming public safety.^{vii} New Hampshire legislators must ensure that laws are driven by facts and evidence, not fear.

This legislation will disproportionately harm Black people. New Hampshire's criminal laws are enforced with a staggering racial bias. For example, in 2020 Black people were 3.29 times more likely to be arrested compared with white people.^{viii} For many low-level discretionary offenses the disparities were even more troubling, including 4.8 times for marijuana possession (despite both groups using marijuana at roughly the same rate^{ix}), 5.9 times for disorderly conduct, and 6.52 times for vagrancy.^x Because Black people are disproportionately arrested, they will also be disproportionately incarcerated under this legislation's mandatory incarceration regime. In the midst of a national reckoning around systemic racism and police violence, it is unconscionable that legislators would expand the already disproportionate incarceration of Black people in New Hampshire.

This legislation will expand the criminalization of poverty in New Hampshire. Personal recognizance bail was implemented to ensure that people who could not afford bail could be released, assuming the court did not find them to be a danger or flight risk. Under this proposed legislation, people who are arrested while on pretrial release will be denied personal recognizance bail, thus setting up a new wealth-based incarceration system where those with wealth can purchase their freedom, while those without will stay in jail. This two-tiered justice system should have no place in the Granite State.

This legislation creates a new and unnecessary financial burden on New Hampshire. During the debate around SB 294, a different version of this legislation, the New Hampshire courts estimated that it would require up to an additional \$1.9 million each year to implement this law, including hiring additional judges and support staff.^{xi} And, that figure does not include the unknown incarceration expenses that local jails would incur to house potentially thousands of additional people each year at a cost ranging between \$105 and \$125 a day per person.^{xii} Lawmakers should focus our limited tax dollars on investments that will actually make our communities safer and more just.

This legislation ignores the work of the bail commission. For two years a diverse group of stakeholders, including prosecutors, judges, legislators, jail superintendents, and civil liberties advocates, met to rethink New Hampshire's bail system. The Commission's recommendations were subsequently passed in 2019 and 2020, resulting in a system that carefully balances the need to protect individual liberty while ensuring the safety of our communities. This legislation reflects none of the recommendations from the Commission and would roll back reforms that reduced unnecessary incarceration and saved the state millions of dollars without jeopardizing public safety.

This legislation raises serious constitutional concerns. The U.S. Supreme Court has made clear that individuals cannot be detained pretrial without bail unless there is a basis of dangerousness, and that dangerousness must be proven by "clear and convincing evidence."^{xiii} This bill instead presumes dangerousness based exclusively on the charge against a person, which runs counter to the Constitution.

This legislation flips innocent until proven guilty on its head. This legislation in effect presumes guilt by mandating the detention of individuals based merely on the fact that they were charged with an offense. To deny the liberty of someone who is presumed innocent, the evidentiary standard should be high and the burden of meeting it should be on the government. This legislation fails to meet this basic test.

Pretrial detention has a devastating human toll. Pretrial detention, even for a short period of time, increases the likelihood of innocent people pleading guilty to a crime, loss of employment, income, and

housing, and traumatic family disruption. This legislation would subject potentially thousands of Granite Staters to these devastating collateral harms.

This legislation would result in the pretrial incarceration of people whose underlying charge does not carry jail time if convicted. This bill specifically allows for pretrial detention for individuals charged only with a class B misdemeanor. The definition of a class B misdemeanor is an offense that carries no jail time. This bill risks imposing a harsher penalty on someone presumed innocent than allowed under the law if that person is subsequently found guilty. This makes no sense.

Oppose HB 1476 - Keep Bail Decisions in the Hands of the Court

ⁱ The Hidden Costs of Pretrial Detention Revisited, Core Correctional Solutions, Mar. 21, 2022, *available at* <https://craftmediabucket.s3.amazonaws.com/uploads/HiddenCosts.pdf>.

ⁱⁱ *Id.* (“These results are largely consistent with those found in previous analyses of data from Kentucky, where no “deterrent effect” of pretrial detention was observed on pretrial outcomes. In addition, that no deterrent effects were revealed is also consistent with decades of research on the effects of custodial sanctions (e.g., incarceration in either jail or prison) on outcomes like recidivism. In fact, the current analyses show that, at least with respect to rearrest during the pretrial period, longer stints in pretrial detention actually did more harm than good in terms of rearrest rates. [¶] The key takeaway from these analyses is that incarcerating people prior to their trial does not result in better pretrial outcomes in terms of failure to appear or rearrest. Indeed, there is no observable “deterrent effect” of pretrial detention, and in fact there is a consistent “criminogenic effect” of pretrial detention on rearrest. This means that the costly option of incarcerating defendants prior to trial is not being translated into a public benefit of an increase in public safety. [¶] It is equally important to note that there is no magic amount of time spent in pretrial detention that will result in a consistent public benefit (i.e, the “three day rule” can be safely abandoned)—the reality is that getting people out of jail sooner rather than later is better.”)

ⁱⁱⁱ *Id.*

^{iv} See RSA 597:2(III)(a) (“If a person is charged with any criminal offense, an offense listed in RSA 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged with a violation of a protective order issued under RSA 173-B, the court may order preventive detention without bail”)

^v Kevin Landrigan, *Bail reform change clears House committee*, Union Leader, Oct 5, 2021 *available at* https://www.unionleader.com/news/politics/state/bail-reform-change-clears-house-committee/article_af58860b-e7cc-5b8e-ac43-c474324ed6b1.html.

^{vi} Group A Crimes per 100,000 population have substantially decreased annually since bail reform in 2018, from 4,558.4 per 100,000 in 2018, to 4,305.9 per 100,000 in 2019, to 3,901.4 per 100,000 in 2020. See NH Department of Safety, New Hampshire Crime Summary (Public), 2018, 2019, 2020, *available at* [Beyond 20/20 Perspective - View Reporting Services report \(nh.gov\)](#).

^{vii} See, Ames Grawert & Noah Kim, *The Facts on Bail Reform and Crime Rates in New York State*, Brennan Center, Mar. 22, 2022, *available at* <https://www.brennancenter.org/our-work/research-reports/facts-bail-reform-and-crime-rates-new-york-state>; see also, Andrew Schneider, *Harris County's misdemeanor bail reforms are working, a new report finds*, Houston Public Media, Mar. 3, 2022, *available at* <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2022/03/03/420398/two-years-on-harris-countys-misdemeanor-bail-reforms-appear-to-be-working-as-intended>.

^{viii} New Hampshire's population is 1,388,992. In 2020, New Hampshire law enforcement arrested 32,780 white people and 2,084 Black people for all offenses. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, All Crimes, 2020, New Hampshire, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. White people comprise 93.1 percent of the population and Black people comprise 1.8 percent of the population, *available at* U.S. Census Bureau, QuickFacts, New Hampshire, *available at* <https://www.census.gov/quickfacts/concordcitynewhampshire>.

^{ix} Fred Dews, *Charts of the week: Marijuana use by race, Islamist rule in Middle East, climate adaptation savings*, Brookings, Aug. 11, 2017, *available at* <https://www.brookings.edu/blog/brookings-now/2017/08/11/charts-of-the-week-marijuana-use-by-race/>.

^x New Hampshire's population is 1,388,992. In 2020, New Hampshire law enforcement arrested 1,332 white people and 125 Black people for Drug Possession – Marijuana, 709 white people and 81 Black people for Disorderly Conduct, and 103 white people and 13 Black people for Vagrancy. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, All Crimes, 2020, New Hampshire, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. White people comprise 93.1 percent of the population and

Black people comprise 1.8 percent of the population, *available at* U.S. Census Bureau, QuickFacts, New Hampshire, *available at* <https://www.census.gov/quickfacts/fact/table/NH/PST045221>.

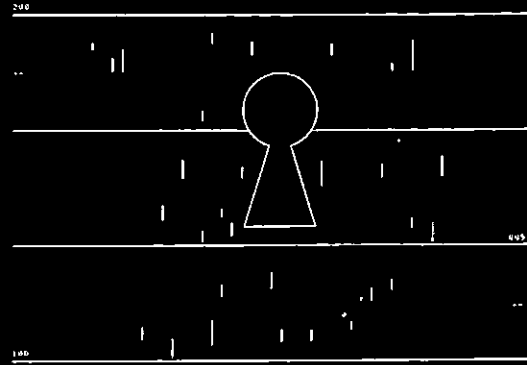
^{xi} See, Testimony of Mary Ann Dempsey (Judicial Branch), Hearing on SB 294, Jan. 18, 2022, *available at* https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1995&inflect=2.

^{xii} See, e.g. HB 1306-FN, As Introduced, 2022 Session, *available at* http://www.gencourt.state.nh.us/lsr_search/billText.aspx?id=1700&type=4.

^{xiii} *United States v. Salerno*, 481 U.S. 739 (1987).

THE HIDDEN COSTS OF PRETRIAL DETENTION REVISITED

MARCH 21, 2022



EXECUTIVE SUMMARY

Any time a person is arrested and accused of committing a crime, a decision has to be made. Will this person be quickly released back into the community, or will this person be detained in jail to await the next stage of case processing?

This decision is not a strictly “either-or” proposition. Some people facing charges are incarcerated during this pretrial stage for months or even years, while other spend only a few hours or days in jail, and some spend no time behind bars at all.

This pretrial detention decision carries enormous consequences for the individual charged, and has serious downstream effects throughout the entire justice system. Accordingly, the decision whether to subject someone to incarceration awaiting further court processing is a weighty one and is often informed by a complex set of factors. Concerns about community safety, the constitutional rights of justice-involved persons, and the need for individuals to appear in court all play an important role.

The key question at hand is whether pretrial detention promotes future court appearance or public safety. If it does, there may be a benefit of pretrial detention with respect to public safety. However, it is possible that pretrial detention actually makes things worse for justice-involved individuals—a finding revealed by a recent meta-analysis of over 100 studies on the effects of custodial versus community sanctions (Petrich et al., 2021). If pretrial detention actually inflicts harms, then not only does it compromise public safety, but it also forces the public to bear additional costs—not only financially but also the human costs on people and their families-of incarcerating citizens unnecessarily.

The present study builds upon prior analyses that showed pretrial detention for a period longer than three days was associated with higher rates of failing to appear and re-arrest during the pretrial phase. However, this “three-day rule” was generated with data that had little precision in terms of actual time spent in pretrial detention. The new data used in the present study contain time-stamped information for more precise estimates, and more rigorous statistical analyses were applied to assess the potential “generality” of the effects.

To that end, the present study uses data on 1,487,107 individuals booked into a jail in Kentucky between 2009 and 2018 to address two broad research objectives:

1) to investigate the relationship between pretrial detention and failure to appear, 2) to investigate the relationship between pretrial detention, and the length of pretrial detention, and new arrest during the pretrial phase, 3) to investigate the relationship between pretrial detention and sentencing outcomes, and 4) to determine the extent to which these findings are “general” across sociodemographic categories of people and across different time periods.



This work was supported by Arnold Ventures, a philanthropy dedicated to tackling some of the most pressing problems in the United States. The authors wish to thank Tara Blair, Daniel Sturtevant, the members of the Arnold Ventures Pretrial Policy and Research Advisory Board, Stuart Buck, and the State of Kentucky for assistance, participation, review, and support of this project.

Multivariate models were generated that controlled for relevant factors such as the likelihood of FTA or rearrest, supervision status, offense type, offense level, time at time in the community, demographic characteristics, and other factors. Three critical findings related to the impact of pretrial detention were revealed.

1. **Pretrial detention and failure to appear (FTA): Pretrial detention—for any amount of time (not just for three days or longer)**—is not consistently associated with the likelihood of failing to appear.
2. **Pretrial detention and rearrest:** Pretrial detention—for any length of time (not just for three days or longer)—is associated with a higher likelihood of a new arrest pending trial.
3. **Sentencing outcomes:** Pretrial detention is associated with an increased likelihood of receiving a sentence to jail or prison and a longer sentence compared to those that were released pretrial. This finding held even when controlling for the outcomes of pretrial release. That is, those that were rearrested or failed to appear on pretrial release were still less likely to receive a sentence to incarceration and received a shorter sentence relative to those that were detained pretrial.
4. **Generality of effects:** Race was not a significant factor in predicting either failure to appear or for rearrest, and the relationship between pretrial detention and pretrial outcomes (failure to appear and rearrest) did not vary significantly or consistently by race of the justice-involved person. Furthermore, the effect of pretrial detention on these outcomes was general across time periods both before and after legal changes were implemented to begin using a new risk assessment instrument during the pretrial phase.

PROJECT DESCRIPTION

Previous analyses of data drawn from Kentucky between 2009-2010 were conducted in 2013. These original analyses showed that, overall, there was no significant “deterrent effect” of pretrial detention on outcomes such as failure to appear or rearrest when the length of pretrial detention exceeded three days.¹ Even further, the general pattern of findings—in particular, the apparent “three day rule”—indicated that, if anything, longer periods of pretrial detention were associated with worse outcomes: higher rates of failure to appear and rearrest, especially for individuals who were found to be lower risk based on an assessment.

The present research revisits this question with more fine-grained data on the time spent in pretrial detention, a longer time window of cases, more detailed data on the length of time spent in pretrial detention, and investigates these questions using more advanced statistical modeling techniques that are more likely to reveal “causal” relationships.²

DATA AND METHODS

The sample used for the current study includes 1,487,107 individuals who were arrested and booked into a Kentucky jail between 2009 and 2018. The measures in this study included the following:

- Individuals’ demographic characteristics
- Individuals’ likelihood of FTA or rearrest
- Offense characteristics including offense level (e.g., felony, misdemeanor) as well as felony offense class (e.g., A, B, C, D)
- Details of the pretrial status (released or detained, length of detention in days)
- Time in the community for both pretrial and post-disposition periods

The key outcome variables used in this study include:

- Failure to appear
- Rearrest for new offense during pretrial release
- Sentencing outcomes (sentenced to incarceration and sentence length)

The majority of individuals in the sample were white (80%) and male (71%); most were not arrested for a felony offense (61%); and the majority were subject to pretrial detention for less than 24 hours (56%). With respect to the outcomes of interest, only a small percentage either failed to appear (17%) or were rearrested (12%).

Multivariate analyses were used to complete these analyses, including logistic regression analysis, regression discontinuity models³, as well as robust and bias-corrected models. The results are presented in the simplest form and are consistent across all methods of estimation.

RESULTS

Failure to Appear

Table 1 displays the results of a multivariate regression analysis for failure to appear. This model controls statistically the full range of other factors mentioned earlier that may influence the likelihood of failing to appear. Note that most of the risk ratios for each of the lengths of pretrial detention are not statistically significant.⁴ The exception to this trend are the risk ratios for pretrial detention lengths of 10, 11, and 12 days. Additional models indicated that an increase in failure is noted when a defendant is detained for four or more days and still other models indicated that longer periods of pretrial detention were associated with a decreased likelihood of failure to appear. Finally, regression discontinuity models at using hours in detention revealed that there is no “optimal” time in pretrial detention as related to failure to appear.⁵ Overall, it appears then that pretrial detention does not maintain a consistent relationship with failure to appear.

Table 1. Multivariate regression results for the impact of pretrial detention length and failure to appear (FTA).

Variable	Risk Ratios	p-value
Number of Charges	1.037893	≤ 0.001
Felony Charge	0.69097	≤ 0.001
Misdemeanor Charge	1.351901	≤ 0.001
Against Person	0.553353	≤ 0.001
Property	1.382691	≤ 0.001
Time at Risk	1.003432	≤ 0.001
Black	1.215701	≤ 0.001
Male	1.000688	0.945

Hours in Detention		
(0/23=0)	Reference	
(24/47=1)	1.061	0.05
(48/71=2)	1.060	0.374
(72/95=3)	1.108	0.186
(96/119=4)	1.124	0.055
(120/143=5)	1.137	0.011
(144/167=6)	1.118	0.057
(168/191=7)	1.092	0.191
(192/215=8)	1.114	0.142
(216/239=9)	1.110	0.019
(240/263=10)	1.186	≤ 0.001
(264/287=11)	1.259	≤ 0.001
(288/311=12)	1.185	≤ 0.001
(312/335=13)	1.128	0.028
(336/359=14)	1.044	0.597
(360/383=15)	1.212	0.009
(384/407=16)	1.131	0.119
(408/431=17)	1.165	0.011
(432/455=18)	1.157	0.03
(456/479=19)	1.179	0.077
Constant	0.071	

Pretrial Rearrest

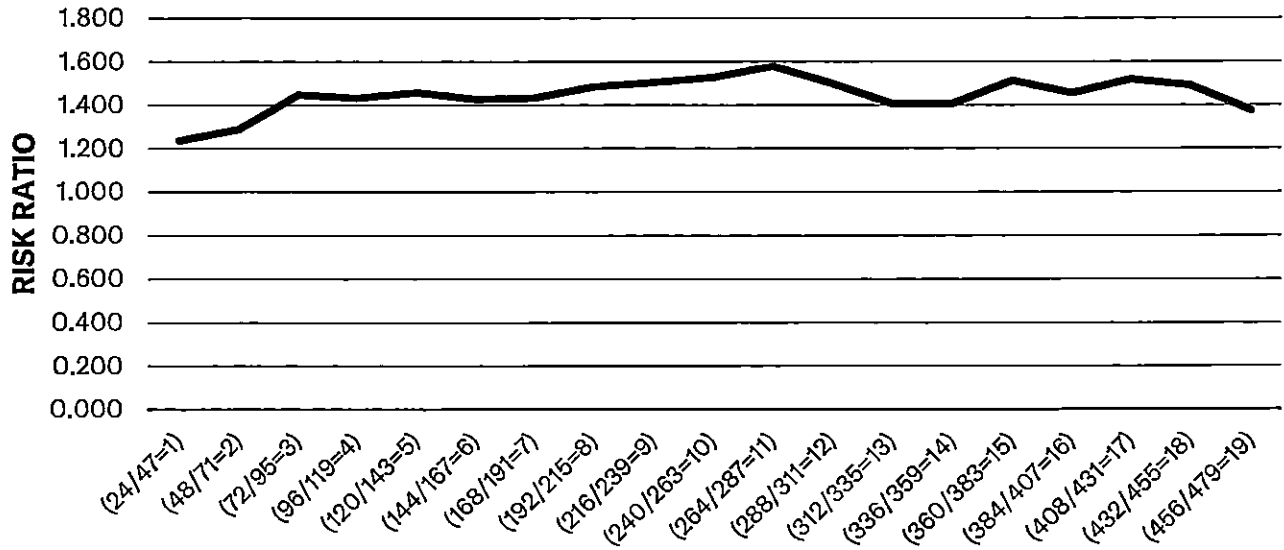
Table 2 displays the results for the analyses for the relationship between hours spent in pretrial detention and the odds of being rearrested during the pretrial period. The basis of comparison here is 0-23 hours spent in pretrial detention, and these coefficients are interpreted as a value of 1.0 is no association at all; a value below 1.0 would indicate that the odds of being rearrested are lower for those subject to pretrial detention, and a value above 1.0 would indicate that the odds of being rearrested are higher for those subject to pretrial detention.

Table 2. Multivariate regression results for rearrest by hours spent in pretrial detention.

Variable	Risk Ratio	p-value
Number of Charge	0.975	≤ 0.001
Felony Charge	1.056	0.179
Misdemeanor Charge	1.163	≤ 0.001
Against Person	0.875	0.011
Property	1.270	≤ 0.001
Time at Risk	1.003	≤ 0.001
Black	0.958	0.336
Male	1.188	≤ 0.001
Hours in Detention		
(0/23=0)	Reference	
(24/47=1)	1.237	≤ 0.001
(48/71=2)	1.289	≤ 0.001
(72/95=3)	1.448	≤ 0.001
(96/119=4)	1.432	≤ 0.001
(120/143=5)	1.459	≤ 0.001
(144/167=6)	1.428	≤ 0.001
(168/191=7)	1.432	≤ 0.001
(192/215=8)	1.484	≤ 0.001
(216/239=9)	1.504	≤ 0.001
(240/263=10)	1.528	≤ 0.001
(264/287=11)	1.581	≤ 0.001
(288/311=12)	1.500	≤ 0.001
(312/335=13)	1.406	≤ 0.001
(336/359=14)	1.407	≤ 0.001
(360/383=15)	1.513	≤ 0.001
(384/407=16)	1.456	≤ 0.001
(408/431=17)	1.518	≤ 0.001
(432/455=18)	1.490	≤ 0.001
(456/479=19)	1.375	≤ 0.001
Constant	0.055	≤ 0.001

Overall, these results show is that any time spent in pretrial detention beyond 23 hours is associated with a consistent and statistically significant increase in the likelihood of rearrest.⁶ In particular, as can be seen in Figure 1, the relatively flat line that runs across the figure indicates that, even as you move from left to right along the line (indicating increasingly more time spent in pretrial detention), the elevated odds of rearrest remain fairly constant. These results held up even after controlling for a person's likelihood of rearrest.

Figure 1. Risk Ratio Hours Detained and Subsequent Pretrial Rearrest (Reference is 0-23 hours, All p values < 0.001)



Sentencing Outcomes

Multiple analyses were conducted investigating the likelihood of receiving a sentence to incarceration and the length of that sentence. Models were constructed that examined the relationship between pretrial detention and release and the likelihood of being sentenced to jail or prison, and the length of those sentences. The results of these analyses indicated that those released pretrial were about one-half to three-quarters as likely to receive a sentence to prison or jail compared to detained counterparts. Differences of these magnitudes persisted even for those that were released pretrial and were rearrested or failed to appear. Further, when those released pretrial were sentenced to incarceration, they were sentenced to shorter periods of incarceration than were those that were detained. Again, these shorter sentences were observed even when those released were rearrested or failed to appear.

Pre/Post PSA Implementation

In 2013 Kentucky began using the Public Safety Assessment (or PSA) in all 120 counties. The PSA implemented a research-based and validated assessment tool to assess the risk of pretrial failure (both failure to appear and rearrest).

The analyses presented in Table 4 display the results for failure to appear (FTA) and rearrest by pre- and post PSA eras. The results show that the rates of those individuals detained and released were roughly similar across the two time periods. They also show that rates of FTA rose slightly in the PSA era, as did new rearrests. In addition to the bivariate models presented below, several multivariate models were also run investigating the impact of the PSA implementation on failure to appear, rearrest, and release rates. Overall, these multivariate models indicate that the FTA rate has been trending in an upward direction for some time and that there is not necessarily an increase in FTA rates associated with the date of implementation for the PSA.

Further, models investigating the relationship between the PSA implementation and rearrest on pretrial yielded contradictory results. Taken altogether, it is not likely that the implementation of the PSA had much impact on release, FTA, or pretrial rearrest rates. Finally, and of importance, additional analyses disaggregated by year indicate that the effect of pretrial detention on both of these outcomes (FTA and rearrest) remained constant across both the pre-PSA and PSA time periods.

Table 4. Bivariate results of pre-PSA and PSA eras for failure to appear (FTA) and rearrest 2010-2018.

	N			Percent	
	Detained	Released	Total	Detained	Released
Pre PSA ¹	182433	531015	713448	0.256	0.744
PSA	198609	578489	777098	0.256	0.744

	N			Percent	
	No FTA	FTA	Total	No FTA	FTA
Pre PSA ²	460082	70933	531015	0.866	0.134
PSA	463067	115272	578339	0.801	0.199

	N			Percent	
	No RA	RA	Total	No RA	RA
Pre PSA ³	475651	55364	531015	0.896	0.104
PSA	500837	77502	578339	0.866	0.134

1 = 2 = 0.032; $p = 0.858$

2 = 2 = 8564.410; $p < 0.001$

3 = 2 = 2323.651; $p < 0.001$

DISCUSSION AND CONCLUSIONS

The purpose of the present study was to extend previous analyses of the effect of pretrial detention on pretrial and sentencing outcomes using data from Kentucky. To do so, analyses were conducted with additional data and more rigorous quantitative methods.

The analyses revealed several key findings:

1) increasing the amount of time spent in pretrial detention was not consistently related to the odds of failing to appear in court; 2) increasing the amount of time spent in pretrial detention was consistently associated with an increased odds of rearrest, 3) those released pretrial had a lower likelihood of receiving a sentence to incarceration and when sentenced to incarceration received a shorter sentence, and 4) race was not a significant factor in predicting either failure to appear or for rearrest, and the relationship between pretrial detention and pretrial outcomes (failure to appear and rearrest) did not vary significantly or consistently by race of the individual or by the time period under investigation.

These results are largely consistent with those found in previous analyses of data from Kentucky, where no “deterrent effect” of pretrial detention was observed on pretrial outcomes. In addition, that no deterrent effects were revealed is also consistent with decades of research⁷ on the effects of custodial sanctions (e.g., incarceration in either jail or prison) on outcomes like recidivism. In fact, the current analyses show that, at least with respect to rearrest during the pretrial period, longer stints in pretrial detention actually did more harm than good in terms of rearrest rates.

The key takeaway from these analyses is that incarcerating people prior to their trial does not result in better pretrial outcomes in terms of failure to appear or rearrest. Indeed, there is no observable “deterrent effect” of pretrial detention, and in fact there is a consistent “criminogenic effect” of pretrial detention on rearrest. This means that **the costly option of incarcerating defendants prior to trial is not being translated into a public benefit of an increase in public safety.**

It is equally important to note that there is no magic amount of time spent in pretrial detention that will result in a consistent public benefit (i.e., the “three day rule” can be safely abandoned)—the reality is that **getting people out of jail sooner rather than later is better.**

These analyses also have important implications and recommendations moving forward. For example:

1. Jail time should generally be avoided during the pretrial phase. This is not to say that certain justice-involved persons cannot ever pose a threat to public safety should they be released, but rather that, in most instances, jail is likely the most harmful option during the pretrial stage. Thus – and recognizing that the majority of individuals are successful pretrial^a -- as a general rule, jail should not be the default choice.
2. Judges need to be informed with respect to the present results concerning the consequences of pretrial detention. While the potential for a “deterrent effect” of incarceration is enticing (i.e., that depriving someone of their liberty prevents someone from engaging in crime after release, or through example prevents others from engaging in crime)—and one that judges often assume will occur—the evidence suggests this estimated effect does not exist. At this point, we can say the evidence is clear that pretrial detention is likely more harmful than beneficial.⁹
3. It is important to offer resources to justice-involved individuals during the pretrial phase. Research has consistently demonstrated that a service-delivery approach to criminal justice—one that emphasizes treatment and support—is far more effective than one based on punishment.

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ENDNOTES

- 1 See “The Hidden Costs of Pretrial Detention” (2013, LJAF, Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger); <https://nicic.gov/hidden-costs-pretrial-detention>
 - 2 It is notoriously difficult to establish causality in non-experimental research designs. It is therefore critically important to control for other factors that could be related to the outcome of interest and to accommodate them into a multivariate modeling strategy, which is the approach taken in the present research.
 - 3 The discontinuity in the regression models is the number of hours served in jail during pretrial detention. Discontinuities were tested for at 24, 48, 72, and 96 hours of pretrial detention.
 - 4 To say that a result is “statistically significant” means that the results that were obtained are unlikely to be the result of sampling error. That is, there can be some random fluctuations in the numbers—where they may not be exactly zero—but we are using a statistical approach that determines whether those small deviations from zero might simple be due to chance.
 - 5 These results remained similar across different subsamples of the data (i.e., across different offense and individual characteristics) as well as for different time periods “at risk.”
 - 6 These results remained unchanged across different multivariate estimation techniques (e.g., logistic regression and regression discontinuity analysis).
 - 7 Several meta-analyses of the correctional treatment/sanctions literature have been conducted over the last two decades (see, e.g., Jonson, 2010; Petrich et al., 2021; Smith et al., 2002; Villatez et al., 2015), all of which reach the same general conclusion: that custodial sanctions (like jail relative to remaining in the community) do not consistently reduce recidivism.
 - 8 In a review of Public Safety Assessment (PSA) validation research, base rates for pretrial failure, and specifically for experiencing an arrest pretrial for a violent charge range from 1% to nearly 10%. In Kentucky, the base rate for a new violent arrest pretrial was 1.1% (DeMichele et al., 2018), 4% in Lucas County, Ohio (Lowenkamp et al., 2020), and 9.8% in Los Angeles County, California (Hess & Turner, 2021). Other research (not PSA validation studies) found similarly low rates of arrests for violent charges during pretrial. This includes Cook County, Illinois, which reported a 3% base rate (Stemen & Olson, 2020) and Washington, D.C. with a 1% base rate for pretrial arrests for violence for supervision clients (Pretrial Services Agency for the District of Columbia, 2020).
 - 9 There is a large body of evidence that stiffening criminal penalties in general do not provide any consistent deterrent effects (Mears & Cochran, 2018; Nagin, Cullen, & Jonson, 2009). Even further, more recent evidence in the form of a review of over 100 studies suggests that custodial sanctions (e.g., putting someone in jail rather than keeping them in the community) provides no benefits in terms of crime control (Petrich et al., 2021).
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Please find below "crime" statistics from the NH Department of Safety website between 2018 (the year of the first bail reform bill) and 2020 (the most current year of data available) statewide as well as in the home districts of the police chiefs who testified in support of HB 1476 and SB 294.

The takeaway from the data is clear - crime and arrests are both down substantially since bail reform.

Here is the data:

Statewide Group A Crimes

- Year
 - 2018
 - Total crimes: 60,447
 - Crimes per 100,000: 4,558.6
 - Total arrests: 33,481
 - Arrests per 100,000: 2,525.0
 - 2019
 - Total crimes: 57,107
 - Crimes per 100,000: 4,306.7
 - Total arrests: 32,222
 - Arrests per 100,000: 2,430.0
 - 2020
 - Total crimes: 51,784
 - Crimes per 100,000: 3,905.3
 - Total arrests: 25,896
 - Arrests per 100,000: 1,952.9
- Findings:
 - Between 2018-2020 Group A crimes were **down 14.3 percent** and arrests were **down 22.6 percent** statewide.

Statewide Group B Arrests (The state website only lists total number of arrests for Group B Crimes)

- Group B arrests (total arrests – *not* per 100,000):
 - 2018 - 12,878
 - 2019 - 13,189
 - 2020 - 10,292
- Findings:
 - Between 2018-2020 Group B arrests were **down 20 percent** statewide.

Manchester (Group A crimes)

- 2018
 - Total crimes: 9,198
 - Crimes per 100,000: 8,404.5
 - Total arrests: 3,522
 - Arrests per 100,000: 3,218.2
- 2019
 - Total crimes: 8,603
 - Crimes per 100,000: 7,856.3
 - Total arrests: 3,052
 - Arrests per 100,000: 2,788.7
- 2020
 - Total crimes: 8,321
 - Crimes per 100,000: 7,595.9
 - Total arrests: 2,543
 - Arrests per 100,000: 2,323.6
- Findings: Between 2018-2020 Group A crimes were **down 9.6 percent** and arrests were **down 16.6 percent** in Manchester.

Manchester Group B Arrests (The state website only lists total number of arrests for Group B Crimes)

- Group B arrests (total arrests – *not* per 100,000):
 - 2018 - 528
 - 2019 - 467
 - 2020 - 369
- Findings:
 - Between 2018-2020 Group B arrests were **down 30 percent** statewide.

Bedford (Group A crimes)

- 2018
 - Total crimes: 661
 - Crimes per 100,000: 3,028.8
 - Total arrests: 342
 - Arrests per 100,000: 1,567.1
- 2019
 - Total crimes: 601
 - Crimes per 100,000: 2,753.8
 - Total arrests: 363
 - Arrests per 100,000: 1,663.3
- 2020
 - Total crimes: 466
 - Crimes per 100,000: 2,135.3
 - Total arrests: 275
 - Arrests per 100,000: 1,260.1

- Findings: Between 2018-2020 Group A crimes were **down 29.5 percent** and arrests were **down 19.5 percent** in Bedford.

Bedford Group B Arrests (The state website only lists total number of arrests for Group B Crimes)

- Group B arrests (total arrests – *not* per 100,000):
 - 2018 - 111 (Driving Under the Influence accounted for 59 of the total)
 - 2019 - 149 (Driving Under the Influence accounted for 107 of the total)
 - 2020 - 111 (Driving Under the Influence accounted for 60 of the total)
- Findings:
 - Between 2018-2020 Group B arrests **even**.

Offenses listed under Group A and B

Group A Offenses

Crimes Against Persons

- Murder and Nonnegligent Manslaughter
- Negligent Manslaughter
- Kidnapping/Abduction
- Rape
- Sodomy
- Sexual Assault With An Object
- Fondling
- Incest
- Statutory Rape
- Aggravated Assault
- Simple Assault
- Intimidation

Crimes Against Property

- Arson
- Bribery
- Burglary/Breaking & Entering
- Counterfeiting/Forgery
- Destruction/Damage/Vandalism of Property
- Embezzlement
- Extortion/Blackmail
- False Pretenses/Swindle/Confidence Game
- Credit Card/Automatic Teller Fraud
- Impersonation
- Welfare Fraud
- Wire Fraud
- Motor Vehicle Theft
- Robbery
- Stolen Property Offenses
- Pocket-picking
- Purse-snatching
- Shoplifting
- Theft From Building

- Theft From Coin Operated Machine or Device
- Theft From Motor Vehicle
- Theft of Motor Vehicle Parts/Accessories
- All Other Larceny

Crimes Against Society

- Drug/Narcotic Violations
- Drug Equipment Violations
- Betting/Wagering
- Operating/Promoting/Assisting Gambling
- Gambling Equipment Violations
- Sports Tampering
- Pornography/Obscene Material
- Prostitution
- Assisting or Promoting Prostitution
- Weapon Law Violations

Group B Offenses

- Bad Checks
- Curfew/Loitering/Vagrancy Violations
- Disorderly Conduct
- Driving Under the Influence
- Drunkenness
- Family Offenses (Nonviolent)
- Liquor Law Violations
- Peeping Tom
- Runaway
- Trespass of Real Property



CITY OF MANCHESTER

Joyce Craig
Mayor

February 9, 2022

Chairman Daryl Abbas
NH House Criminal Justice and Public Safety Committee
LOB Room 204
33 N. State Street
Concord, NH 03301

RE: HB1476

Dear Chairman Abbas and Members of the Committee,

Coming before your committee today is HB1476, relative to persons arrested while out on bail. I urge the House Criminal Justice and Public Safety Committee to recommend this bill as "Ought to Pass" to the full House.

As mayor of the largest city in the state, the safety of our residents and visitors is my number one priority. I work closely with the men and women at the Manchester Police Department to address crime in our community, and while well intentioned, the statutory changes to bail in 2018 have had negative consequences in Manchester.

I agree with the overarching premise of bail reform. Individuals should not remain in jail solely because they cannot afford bail. However, those causing a risk to our community and violent offenders should have bail restrictions imposed and should not be released on personal recognizance.

Under the current system, bail commissioners are often making release decisions before an officer has completed their police report. This bill will ensure that a Judge is able to make a well-informed bail term assessment with all necessary information available.

The Manchester Police Department conducted an analysis of arrests for the 12 months prior to bail reform compared to the 12 months after bail reform. Their assessment showed that post-bail reform, Manchester saw a 20% increase of arrests by offenders who were out on bail, and as Hillsborough County does not have adequate pre-trial services, our officers have a limited ability to ensure that bail conditions are met.

HB1476 is one step that we can take to help ensure the safety of our community, but further reforms are necessary, including more uniform pre-trial services to ensure that those who are released on bail are not only complying with their terms, but have the tools in order to do so. I ask that you recommend HB1476 as "Out to Pass" to the full House.

Sincerely,

Joyce Craig
Mayor

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # 1476

Hearing date: _____

Executive Session date: _____

Motion of: 1613 Vote: 3-2

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: OTPA Vote: 3-2

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: violent crimes, serious offenses let the judge look
agree for small petty crimes

Senate Finance Committee

EXECUTIVE SESSION

Bill # HB 1476-FN

Hearing date: N/A
 Executive session date: 05/03/22
 Motion of: OTF

VOTE: 7-0

<u>Made by</u> Daniels <input type="checkbox"/>	<u>Seconded</u> Daniels <input checked="" type="checkbox"/>	<u>Reported</u> Daniels <input type="checkbox"/>
<u>Senator:</u> Reagan <input type="checkbox"/>	<u>by Senator:</u> Reagan <input type="checkbox"/>	<u>by Senator:</u> Reagan <input type="checkbox"/>
Giuda <input checked="" type="checkbox"/>	Giuda <input type="checkbox"/>	Giuda <input checked="" type="checkbox"/>
Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>
D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>
Morse <input type="checkbox"/>	Morse <input type="checkbox"/>	Morse <input type="checkbox"/>
Hennessey <input type="checkbox"/>	Hennessey <input type="checkbox"/>	Hennessey <input type="checkbox"/>

Motion of: _____ VOTE: _____

<u>Made by</u> Daniels <input type="checkbox"/>	<u>Seconded</u> Daniels <input type="checkbox"/>	<u>Reported</u> Daniels <input type="checkbox"/>
<u>Senator:</u> Reagan <input type="checkbox"/>	<u>by Senator:</u> Reagan <input type="checkbox"/>	<u>by Senator:</u> Reagan <input type="checkbox"/>
Giuda <input type="checkbox"/>	Giuda <input type="checkbox"/>	Giuda <input type="checkbox"/>
Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>
D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>
Morse <input type="checkbox"/>	Morse <input type="checkbox"/>	Morse <input type="checkbox"/>
Hennessey <input type="checkbox"/>	Hennessey <input type="checkbox"/>	Hennessey <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Daniels, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Reagan, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Giuda	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Hennessey	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Rosenwald	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Morse	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator D'Allesandro	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, April 20, 2022

THE COMMITTEE ON Judiciary

to which was referred **HB 1476-FN**

AN ACT relative to persons arrested while out on bail.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3-2

AMENDMENT # 2022-1686s

Senator Sharon Carson
For the Committee

Jennifer Horgan 271-7875

JUDICIARY

HB 1476-FN, relative to persons arrested while out on bail.

Ought to Pass with Amendment, Vote 3-2.

Senator Sharon Carson for the committee.

HB1476-FN

Bill Details

Title: (New Title) relative to release of a defendant pending trial.

Sponsors: (*Prime*) Berry (R), Barbara Shaw (D), Alexander (R), Ankarberg (R), Hamer (D), Burt (R), Long (D), McLean (R)

LSR Number: 22-2058

General Status: SENATE

House:

Committee: Criminal Justice and Public Safety

Due Out: 3/10/2022

Status: CONFERENCE COMMITTEE

Senate:

Committee: Finance

Floor Date: 5/26/2022

Status: LAID ON TABLE

Bill Docket

Body	Description
H	Introduced 01/05/2022 and referred to Criminal Justice and Public Safety
H	--CANCELLED-- Public Hearing: 02/04/2022 01:30 pm LOB 202-204
H	Public Hearing: 02/09/2022 11:00 am LOB 202-204
H	Executive Session: 03/02/2022 10:00 AM LOB 202-204
H	Majority Committee Report: Ought to Pass with Amendment # 2022-0895h (Vote 13-7; RC)
H	Minority Committee Report: Inexpedient to Legislate
H	Amendment # 2022-0895h: AA VV 03/15/2022 <u>HJ6</u>
H	Lay HB1476 on Table (Rep. Berry): MF RC 161-168 03/15/2022 <u>HJ6</u>
H	Ought to Pass with Amendment 2022-0895h: MA RC 199-134 03/15/2022 <u>HJ6</u>
S	Introduced 03/17/2022 and Referred to Judiciary: <u>SJ6</u>
S	Hearing: 03/29/2022, Room 100, SH, 01:30 pm; <u>SC13</u>
S	Committee Report: Ought to Pass with Amendment # 2022-1686s, 04/28/2022; <u>SC17</u>
S	Committee Amendment # 2022-1686s, AA, VV; 04/28/2022; <u>SJ10</u>
S	Ought to Pass with Amendment 2022-1686s, RC 21Y-3N, MA; Refer to Finance Rule 4-5; 04/28/2022; <u>SJ10</u>
S	Committee Report: Ought to Pass, 05/05/2022; <u>SC18A</u>
S	Sen. Bradley Floor Amendment # 2022-1941s, AA, VV; 05/05/2022; <u>SC19</u>
S	Ought to Pass with Amendment 2022-1941s, MA, VV; OT3rdg; 05/05/2022; <u>SC</u> <u>19</u>
H	House Non-Concurs with Senate Amendment 2022-1941s 2022-1686s and Requests CofC (Reps. Abbas, Berry, Roy, Rhodes): MA VV 05/05/2022 <u>HJ12</u>
S	Sen. Carson Accedes to House Request for Committee of Conference, MA, VV; 05/12/2022; <u>SJ12</u>
S	President Appoints: Senators Bradley, Gannon, Soucy; 05/12/2022; <u>SJ12</u>
H	--RECESSED-- Conference Committee Meeting: 05/18/2022 01:30 pm LOB 201-203
H	Conference Committee Meeting: 05/19/2022 01:00 pm LOB 201-203
S	Conference Committee Report Filed, # 2022-2089c; 05/26/2022
S	Sen. Carson Moved Laid on Table, MA, VV; 05/26/2022; <u>SJ13</u>
S	Pending Motion Committee of Conference Report # 2022-2089c; 05/26/2022; <u>SJ13</u>

Docket of HB1476

Bill Title: (New Title) relative to release of a defendant pending trial.

Official Docket of **HB1476**..

Date	Body	Description
12/3/2021	H	Introduced 01/05/2022 and referred to Criminal Justice and Public Safety
1/27/2022	H	==CANCELLED== Public Hearing: 02/04/2022 01:30 pm LOB 202-204
2/3/2022	H	Public Hearing: 02/09/2022 11:00 am LOB 202-204
2/28/2022	H	Executive Session: 03/02/2022 10:00 AM LOB 202-204
3/8/2022	H	Majority Committee Report: Ought to Pass with Amendment #2022-0895h (Vote 13-7; RC)
3/8/2022	H	Minority Committee Report: Inexpedient to Legislate
3/15/2022	H	Amendment #2022-0895h : AA VV 03/15/2022 HJ 6
3/21/2022	H	Lay HB1476 on Table (Rep. Berry): MF RC 161-168 03/15/2022 HJ 6
3/21/2022	H	Ought to Pass with Amendment 2022-0895h: MA RC 199-134 03/15/2022 HJ 6
3/22/2022	S	Introduced 03/17/2022 and Referred to Judiciary; SJ 6
3/23/2022	S	Hearing : 03/29/2022, Room 100, SH, 01:30 pm; SC 13
4/20/2022	S	Committee Report: Ought to Pass with Amendment #2022-1686s , 04/28/2022; SC 17
4/28/2022	S	Committee Amendment #2022-1686s , AA, VV; 04/28/2022; SJ 10
4/28/2022	S	Ought to Pass with Amendment 2022-1686s, RC 21Y-3N, MA; Refer to Finance Rule 4-5; 04/28/2022; SJ 10
5/3/2022	S	Committee Report: Ought to Pass, 05/05/2022; SC 18A
5/5/2022	S	Sen. Bradley Floor Amendment #2022-1941s , AA, VV; 05/05/2022; SC 19
5/5/2022	S	Ought to Pass with Amendment 2022-1941s, MA, VV; OT3rdg; 05/05/2022; SC 19
5/10/2022	H	House Non-Concurs with Senate Amendment 2022-1941s 2022-1686s and Requests CofC (Reps. Abbas, Berry, Roy, Rhodes): MA VV 05/05/2022 HJ 12
5/12/2022	S	Sen. Carson Accedes to House Request for Committee of Conference, MA, VV; 05/12/2022; SJ 12
5/12/2022	S	President Appoints: Senators Bradley, Gannon, Soucy; 05/12/2022; SJ 12
5/18/2022	H	==RECESSED== Conference Committee Meeting: 05/18/2022 01:30 pm LOB 201-203
5/19/2022	H	Conference Committee Meeting: 05/19/2022 01:00 pm LOB 201-203
5/19/2022	S	Conference Committee Report Filed, #2022-2089c ; 05/26/2022
5/26/2022	S	Sen. Carson Moved Laid on Table, MA, VV; 05/26/2022; SJ 13
5/26/2022	S	Pending Motion Committee of Conference Report #2022-2089c ; 05/26/2022; SJ 13

Other Referrals

May 19, 2022
2022-2089-CofC
04/10

1 Committee of Conference Report on HB 1476-FN, relative to persons arrested while out on bail.

2
3 Recommendation:

4 That the House recede from its position of nonconcurrency with the Senate amendment, and
5 concur with the Senate amendment, and

6 That the Senate and House adopt the following new amendment to the bill as amended by the
7 Senate, and pass the bill as so amended:

8
9 Amend the bill by replacing all after section 1 with the following:

10
11 2 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, VIII to
12 read as follows:

13 VIII.(a) A person charged with an offense who is, or was at the time the offense was
14 committed, on release pending trial for a felony or misdemeanor under federal or state law, release
15 pending imposition or execution of sentence, appeal of sentence or conviction, or completion of
16 sentence, for any offense under federal or state law; or probation or parole for any offense under
17 federal or state law, except as provided in RSA 597:1-d, III[~~may~~]; **or a person charged with a**
18 **class B misdemeanor who has been 2 times previously charged with a misdemeanor or**
19 **felony shall** be detained for a period of not more than [72] 24 hours [~~from the time of his or her~~
20 ~~arrest, excluding Saturdays, Sundays and holidays. The law enforcement agency making the arrest~~
21 ~~shall notify the appropriate court, probation or parole official, or federal, state, or local law~~
22 ~~enforcement official. Upon such notice, the court shall direct the clerk to notify by telephone the~~
23 ~~department of corrections, division of field services, of the pending bail hearing. If the department~~
24 ~~fails or declines to take the person into custody during that period, the person shall be treated in~~
25 ~~accordance with the provisions of law governing release pending trial. Probationers and parolees~~
26 ~~who are arrested and fail to advise their supervisory probation officer or parole officer in accordance~~
27 ~~with the conditions of probations and parole may be subject to arrest and detention as probation and~~
28 ~~parole violators.] **after the arrest, Saturdays, Sundays, and legal holidays excluded, or no**
29 **later than 36 hours after arrest if arrested between 8:00 a.m. and 1:00 p.m. and the person's**
30 **attorney is unable to attend an arraignment on the same day, Saturday, Sunday, and legal**
31 **holidays excluded.**~~

32 3 Effective Date. This act shall take effect January 1, 2023.

Committee of Conference Report on HB 1476-FN
- Page 2 -

The signatures below attest to the authenticity of this Report on HB 1476-FN, relative to persons arrested while out on bail.

Conferees on the Part of the Senate

Conferees on the Part of the House

Sen. Bradley, Dist. 3

Rep. Abbas, Rock. 8

Sen. Gannon, Dist. 23

Rep. Berry, Hills. 44

Sen. Soucy, Dist. 18

Rep. Roy, Rock. 32

Rep. Rhodes, Ches. 15

Committee of Conference Report on HB 1476-FN
- Page 3 -

2022-2089-CofC

AMENDED ANALYSIS

This bill lists certain offenses which, if committed by the defendant, create a presumption that a defendant is a danger to the public and shall be detained for not more than 36 hours. The bill also provides that a person who commits certain offenses while on bail shall be detained for not more than 24 hours.

Senate Inventory Checklist for Archives

Bill Number: HB 1476-FN

Senate Committee: FINANCE

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # _____ - amendment # _____

- amendment # _____ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # 1941s - amendment # _____

- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference): 2089c

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Debra A. Martore
Committee Aide

06/15/22
Date

Senate Clerk's Office JM

Senate Inventory Checklist for Archives

Bill Number: HB1476

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1411s - amendment # 1695
- amendment # 1696s - amendment # _____
- Executive Session Sheet
- Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- _____ - amendment # _____ _____ - amendment # _____
- _____ - amendment # _____ _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

- _____ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- _____ Enrolled Bill Amendment(s)
- _____ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

- as amended by the senate _____ as amended by the house
- _____ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

[Signature]
Committee Aide

8/12/22
Date

Senate Clerk's Office AK