

Sen. Feltes, Dist 15
Sen. Bradley, Dist 3
Sen. Hennessey, Dist 5
Sen. Carson, Dist 14
March 27, 2019
2019-1341s
04/10

Floor Amendment to SB 314-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, III(a) and
4 the introductory paragraph of RSA 597:2, III(b) to read as follows:

5 III.(a) The court shall order the pre-arraignment or pretrial release of the person on his or
6 her personal recognizance, or upon execution of an unsecured appearance bond in an amount
7 specified by the court, or cash or corporate surety bail, subject to the condition that the person not
8 commit a crime during the period of his or her release, and subject to such further condition or
9 combination of conditions that the court may require unless the court determines by a
10 preponderance of the evidence that such release will not reasonably assure the appearance of the
11 person as required. A person who the court determines to be a danger to the safety of that person
12 or the public shall be governed by the provisions of paragraph IV, except that ~~[such dangerousness~~
13 ~~determination shall not be based solely on evidence of drug or alcohol addiction or homelessness]~~
14 ***evidence of substance misuse or homelessness may be considered by the court, but such***
15 ***evidence shall not be the sole basis of a dangerous determination.***

16 (b) In determining the amount of the unsecured appearance bond or cash or corporate
17 surety bail under subparagraph ~~III(a)~~ **III(a)**, if any, the court:

18 2 New Subparagraph; Bail and Recognizances; Release of Defendant Pending Trial. Amend
19 RSA 597:2, III by inserting after subparagraph (f) the following new subparagraph:

20 (g) If the court determines by a preponderance of the evidence that a person has failed
21 to appear on any previous matter charged as a felony, class A misdemeanor, or driving or operating
22 while impaired, or a reasonably equivalent offense in an out-of-state jurisdiction, 3 or more times
23 within the past 5 years, there shall be a rebuttable presumption that release will not reasonably
24 assure the appearance of the person as required.

25 3 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, IV to read
26 as follows:

27 IV.(a) If a person is charged with any criminal offense, an offense listed in RSA 173-B:1, I
28 or a violation of a protective order under RSA 458:16, III, or after arraignment, with a violation of a
29 protective order issued under RSA 173-B, the court may order preventive detention without bail, or,
30 in the alternative, may order restrictive conditions including but not limited to electronic

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1 monitoring and supervision, only if the court determines by clear and convincing evidence that
2 release will endanger the safety of that person or the public. The court may consider ~~[the following~~
3 ~~conduct as evidence of posing a danger, including, but not limited to:~~

4 ~~(1) Threats of suicide.~~

5 ~~(2) Acute depression.~~

6 ~~(3) History of violating protective orders.~~

7 ~~(4) Possessing or attempting to possess a deadly weapon in violation of an order.~~

8 ~~(5) Death threats or threats of possessiveness toward another.~~

9 ~~(6) Stalking, as defined in RSA 633:3-a.~~

10 ~~(7) Cruelty or violence directed toward pets]~~ ***all relevant factors bearing on***
11 ***whether the release will endanger the safety of that person or the public.***

12 ***(b) Evidence in support of preventive detention shall be made by offer of proof***
13 ***at the initial appearance before the court. At that time, the defendant may request a***
14 ***subsequent bail hearing where live testimony is presented to the court. At any subsequent***
15 ***hearing, such testimony may be presented via video conferencing, unless the court***
16 ***determines that witness testimony in court is necessary. A request by the defendant for in-***
17 ***court testimony shall be made by oral motion at the initial hearing or by written motion***
18 ***prior to any subsequent hearing. Any order granting the defendant's request shall be***
19 ***distributed to the parties at least 48 hours prior to any subsequent hearing.***

20 ***(c) There shall be a rebuttable presumption that an alleged victim of the crime***
21 ***shall not be required to testify at the bail hearing. Nothing in this section shall preclude***
22 ***an alleged victim from voluntarily testifying at such hearing. The state may present***
23 ***evidence of statements made in the course of an investigation through a law enforcement***
24 ***officer.***

25 4 Judicial Branch; Bail Reform Coordinator. The judicial branch may establish the position of
26 bail reform coordinator who shall be responsible for overseeing the judicial branch's text messaging
27 initiative and monitoring and evaluating issues concerning a defendant's failure to appear while on
28 bail.

29 5 Bail Commissioners; Fees. Amend RSA 597:20 to read as follows:

30 597:20 Fees. The bail commissioners in such cases shall be entitled to a fee of \$40. However,
31 clerks of court or members of their staffs who are bail commissioners shall be entitled to collect such
32 fee only when called while not on active duty. In jurisdictions where the bail commissioner is a full-
33 time salaried police officer, constable, sheriff, deputy sheriff, state police employee, or anyone else
34 authorized to execute police powers, such person shall not receive the fee established in this section,
35 but instead such amount shall be remitted to the town or city in which the district court is situated.
36 ***If the defendant is indigent, the fee shall be waived.***

37 6 Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services. RSA 597:43 is

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1 repealed and reenacted to read as follows:

2 597:43 Commission Established.

3 I. There is established a commission on pretrial detention, pretrial scheduling, and pretrial
4 services. The commission shall consist of the following members:

5 (a) One member of the senate, appointed by the senate president.

6 (b) Three members of the house of representatives, appointed by the speaker of the
7 house of representatives.

8 (c) The attorney general, or designee.

9 (d) The chief justice of the New Hampshire superior court, or designee.

10 (e) The chief administrative judge of the New Hampshire circuit court, or designee.

11 (f) The executive director of the American Civil Liberties Union of New Hampshire, or
12 designee.

13 (g) The executive director of the New Hampshire Public Defender, or designee.

14 (h) The president of the New Hampshire Association of Chiefs of Police, or designee.

15 (i) The president of the New Hampshire Police Association, or designee.

16 (j) One superintendent of a New Hampshire county correctional facility, appointed by
17 the governor.

18 (k) One member from the public with experience in law enforcement, appointed by the
19 governor.

20 (l) One member from the Association of County Attorneys, appointed by that
21 association.

22 II. The commission shall:

23 (a) Review and provide recommendations on risk assessment, dangerousness
24 determinations, pretrial services, and funding for pretrial services in advance of the 2020-2021
25 legislative session.

26 (b) Review and provide recommendations on cost-effective court communications and
27 scheduling of pretrial matters.

28 (c) Review the rates of failure to appear in criminal cases and possible reasons for such
29 failures.

30 (d) Solicit testimony and input from the general public.

31 III. Legislative members of the commission shall receive mileage at the legislative rate
32 when attending to the duties of the commission. The members of the commission shall elect a
33 chairperson from among the members. The first meeting of the commission shall be called by the
34 senate member. The first meeting of the commission shall be held within 45 days of the effective
35 date of this section. Seven members of the commission shall constitute a quorum.

36 IV. The commission shall report its findings and any recommendations for proposed
37 legislation to the president of the senate, the speaker of the house of representatives, the senate

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- 1 clerk, the house clerk, the governor, and the state library on or before November 1, 2020.
- 2 7 Repeal. RSA 597:43, relative to establishing a commission on pretrial detention, pretrial
- 3 scheduling, and pretrial services, is repealed.
- 4 8 Effective Date.
- 5 I. Section 7 of this act shall take effect November 1, 2020.
- 6 II. The remainder of this act shall take effect upon its passage.

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AMENDED ANALYSIS

This bill amends the procedure for considering the dangerousness of a defendant for the purpose of determining whether the defendant should be released pending trial; authorizes the position of bail reform coordinator in the judicial branch; re-establishes the commission on pretrial detention, pretrial scheduling, and pretrial services; and waives the bail commissioner's fee for indigent defendants.