

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

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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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty 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
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$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