

Amendment to SB 92-FN

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

2  
3 AN ACT relative to the 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 to read as  
8 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.

(1) *Except as provided in RSA 597:1-c, a person who is charged with homicide under RSA 630; first degree assault under RSA 631:1; second degree assault under RSA 631:2; domestic violence under RSA 631:2-b; aggravated felonious sexual assault under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping under RSA 633:1; stalking under RSA 633:3-a; trafficking in persons under RSA 633:7; robbery under RSA 636:1, III; possession, manufacture, or distribution of child sexual abuse images under RSA 649-A; computer pornography and child exploitation under RSA 649-B; or felonious use of firearms under RSA 650-A:1 shall not be brought before a bail commissioner and shall, upon arrest, be detained pending arraignment before the court. Arraignment shall occur no later than 24 hours after the arrest, Saturdays, Sundays, and legal holidays excluded, or no later than 36 hours after arrest if arrested between 8:00 a.m. and 1:00 p.m. and the person's attorney is unable to attend an arraignment on the same day, Saturdays, Sundays, and legal holidays excluded. At the person's appearance before the court, the court shall order that the person be detained pending trial if the court determines by clear and convincing evidence that release of the person is a danger to the public or themselves. In determining whether release will endanger the safety of that person or the public, the court may consider all relevant and material factors presented pursuant to paragraph IV. If the court does not find by clear and convincing evidence that the person must be detained, the court shall order the person released pursuant to paragraph I(a) or paragraph I(b), or, if applicable, temporarily detained pursuant to paragraph I(d).*

(2) If a person is charged with any *other* 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, or, in the alternative, may order restrictive conditions including but not limited to electronic monitoring and supervision, only if the court determines by clear and convincing evidence that release will endanger the safety of that person or the public. In determining whether release will endanger the safety of that person or the public, the court may consider all relevant factors presented pursuant to paragraph IV.

(b) Assuring the court appearance of charged persons.

(1) The court shall order the pre-arraignment or pretrial release of the person on his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, or cash or corporate surety bail, subject to the condition that the person not commit a crime during the period of his or her release, and subject to such further condition or combination of conditions that the court may require unless the court determines by a preponderance of the evidence that such release will not reasonably assure the appearance of the person as required.

**Amendment to SB 92-FN**  
**- Page 3 -**

1           (2) If the court determines by a preponderance of the evidence that a person has  
2 failed to appear on any previous matter charged as a felony, class A misdemeanor, or driving or  
3 operating while impaired, or a reasonably equivalent offense in an out-of-state jurisdiction, 3 or more  
4 times within the past ~~[5]~~ **3** years, or twice on the present case, ~~[there shall be a rebuttable~~  
5 ~~presumption that release will not reasonably assure the appearance of the person as required]~~ **the**  
6 **person shall be detained in pretrial detention based upon the rebuttable presumption that**  
7 **release will not reasonably assure the appearance of the person as required.**

8           (3) In determining the amount of the unsecured appearance bond or cash or  
9 corporate surety bail, the court may consider all relevant factors bearing upon a person's ability to  
10 post bail.

11           (4) The court shall not impose a financial condition that will result in the pretrial  
12 detention of a person solely as a result of that financial condition unless the court determines by  
13 clear and convincing evidence that the nature of the allegations presents a substantial risk that the  
14 person will not appear and that no reasonable alternative will assure the person's appearance. The  
15 defendant shall be afforded the opportunity to be heard.

16           (c) Failure of a person to abide by previous bail conditions. ~~[If there is probable cause to~~  
17 ~~believe that, while on release pending resolution of a previous offense, the person committed a~~  
18 ~~felony, class A misdemeanor, or driving or operating while impaired, there shall be a rebuttable~~  
19 ~~presumption that the person will not abide by a condition that the person not commit a new offense.~~  
20 ~~The court shall not impose a financial condition that will result in the pretrial detention of the~~  
21 ~~person solely as a result of that financial condition unless the court determines by clear and~~  
22 ~~convincing evidence after a hearing that no reasonable alternative or combination of conditions will~~  
23 ~~assure that the person will not commit a new offense. The court may consider any relevant factors~~  
24 ~~in making its determination]~~ **If there is probable cause to believe that a person, while on**  
25 **release pending resolution of a previous offense, committed a felony, class A misdemeanor,**  
26 **or driving or operating while impaired, was released on bail, and thereafter was arrested**  
27 **for a third felony, class A misdemeanor, or driving or operating while impaired, the person**  
28 **shall be detained in pretrial detention based upon the rebuttable presumption that the**  
29 **person will not abide by a condition that the person not commit a new offense.**

30           IV.(a) Evidence in support of preventive detention shall be made by offer of proof at the  
31 initial appearance **of the person** before the court. ~~[At that time, the defendant]~~ **If the court**  
32 **determines the person should be detained pursuant to paragraph III, the person** may  
33 request a subsequent bail hearing where live testimony ~~[is]~~ **may be** presented to the court **to rebut**  
34 **any presumption that the person is a danger to himself, herself, or the public, or that**  
35 **release will not reasonably assure the person's appearance, or that the person is at-risk of**  
36 **re-offending while on bail.**

**Amendment to SB 92-FN**  
**- Page 4 -**

1 (b) At any subsequent hearing, such testimony may be presented via video conferencing,  
2 unless the court determines that witness testimony in court is necessary. A request by the  
3 defendant for in-court testimony shall be made by oral motion at the initial hearing or by written  
4 motion prior to any subsequent hearing. Any order granting the defendant's request shall be  
5 distributed to the parties at least 48 hours prior to any subsequent hearing.

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

10 V. A no-contact provision contained in any bail order shall not be construed to:

11 (a) Prevent counsel for the defendant from having contact with counsel for any of the  
12 individuals protected by such provision; or

13 (b) Prevent the parties, if the defendant and one of the protected individuals are parties  
14 in a domestic violence or marital matter, from attending court hearings scheduled in such matters or  
15 exchanging copies of legal pleadings filed in court in such matters.

16 VI. If a person is charged with violation of a protective order issued under RSA 173-B or  
17 RSA 633:3-a, the person shall be detained without bail pending arraignment pursuant to RSA 173-  
18 B:9, I(a).

19 VII. In a release order issued pursuant to this section, the court shall include a written  
20 statement that sets forth:

21 (a) All of the conditions to which the release is subject, in a manner sufficiently clear  
22 and specific to serve as a guide for the person's conduct; and

23 (b) The provisions of RSA 641:5, relative to tampering with witnesses and informants.

24 VIII. A person charged with an offense who is, or was at the time the offense was committed,  
25 on release pending trial for a felony or misdemeanor under federal or state law, release pending  
26 imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for  
27 any offense under federal or state law; or probation or parole for any offense under federal or state  
28 law, except as provided in RSA 597:1-d, III, ~~[may]~~ **shall** be detained for a period of not more than 72  
29 hours from the time of his or her arrest, excluding Saturdays, Sundays and holidays. The law  
30 enforcement agency making the arrest shall notify the appropriate court, probation or parole official,  
31 or federal, state, or local law enforcement official. Upon such notice, the court shall direct the clerk  
32 to notify by telephone the department of corrections, division of field services, of the pending bail  
33 hearing. ~~[If the department fails or declines to take the person into custody during that period, the  
34 person shall be treated in accordance with the provisions of law governing release pending trial.]~~

35 ***The court shall hold a bail hearing promptly after the expiration of the 72-hour period and***  
36 ***may consider the actions taken or to be taken by such other court, probation or parole***  
37 ***official, or law enforcement official in determining the conditions of release or detention to***

**Amendment to SB 92-FN**  
**- Page 5 -**

1 ***be imposed in the case before the court.*** Probationers and parolees who are arrested and fail to  
2 advise their supervisory probation officer or parole officer in accordance with the conditions of  
3 probations and parole [~~may~~] ***shall*** be subject to arrest and detention as probation and parole  
4 violators.

5 IX. Upon the appearance of a person charged with a class B misdemeanor, the court shall  
6 issue an order that, pending arraignment, the person be released on his or her personal  
7 recognizance, unless the court determines pursuant to paragraph III that such release will endanger  
8 the safety of the person or the public. The court shall appoint an attorney to represent any indigent  
9 person charged with a class B misdemeanor denied release for the purpose of representing such  
10 person at any detention hearing.

11 X. A person detained by a circuit court has the right to:

12 (a) In the first instance, a hearing in circuit court within 36 hours after the filing of the  
13 motion, excluding weekends and holidays on a motion to reconsider the original detention order; and

14 (b) A decision upon a de novo appeal, pursuant to RSA 597:6-e, II, to the superior court  
15 within 36 hours of the filing of the appeal, excluding weekends and holidays.

16 2 Effective Date. This act shall take effect January 1, 2023.

**Amendment to SB 92-FN**  
**- Page 6 -**

2021-2180h

**AMENDED ANALYSIS**

This bill amends the statute governing bail and pretrial release to include provisions for pretrial detention for commission of certain offenses that would create a presumption that the defendant is a danger to the public.