

CHAPTER 249
SB 124-FN – FINAL VERSION

03/12/2015 0736s
3June2015... 1824h
06/24/2015 2333EBA

2015 SESSION

15-0923
09/01

SENATE BILL ***124-FN***

AN ACT relative to filing felonies first in the superior court.

SPONSORS: Sen. Lasky, Dist 13; Sen. Carson, Dist 14; Sen. Pierce, Dist 5; Sen. Cataldo, Dist 6;
Rep. Berch, Ches 1; Rep. Wheeler, Merr 3

COMMITTEE: Judiciary

ANALYSIS

This bill makes changes in criminal procedure laws to require felonies to be filed first in the superior court.

This bill was requested by the judicial branch.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to filing felonies first in the superior court.

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

1 249:1 Statement of Purpose. The general court hereby establishes a project whereby felony
2 complaints and misdemeanors and violation level charges directly related to those felonies shall be
3 filed exclusively with the superior court. This project shall be referred to as the felonies first project.
4 The purpose of this project is to more effectively manage the flow of felony cases and related
5 misdemeanors and violation level charges from case initiation through disposition. The general
6 court finds that this will result in significant time savings for the court, lawyers, and litigants,
7 leading to more effective justice earlier in the court process.

8 249:2 New Chapter; Criminal Procedure in Superior Court. Amend RSA by inserting after
9 chapter 592-A the following new chapter:

CHAPTER 592-B

CRIMINAL PROCEDURE IN SUPERIOR COURT

10 592-B:1 Jurisdiction. The superior court shall have exclusive jurisdiction over felony complaints and
11 misdemeanors and violation level charges that are directly related to those felonies. The superior court
12 shall also have jurisdiction over de novo appeals of class A misdemeanors pursuant to RSA 599:1.
13
14

15 592-B:2 Implementation Plan.

16 I. Beginning January 1, 2016, the felonies first project shall become effective in the Cheshire
17 county and Strafford county superior courts. Beginning July 1, 2016, the felonies first project shall
18 become effective in Belknap county superior court.

19 II. This chapter shall take effect in the remaining superior courts as of the date set forth in
20 an order issued by the supreme court. The remaining superior courts shall be added to the project in
21 approximately the following order:

22 (a) Merrimack county superior court.

23 (b) Carroll county superior court.

24 (c) Hillsborough county superior court-northern district and Hillsborough county superior
25 court-southern district. The municipalities included in each district shall be as listed in RSA 496:1.

26 (d) Grafton county superior court and Coos county superior court.

27 (e) Rockingham county superior court and Sullivan county superior court.

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1 III. All felony and any directly related misdemeanor or violation level offenses alleged to have
2 occurred on or after the effective date of this chapter in the county in which the offense allegedly
3 occurred shall be filed in the superior court. All felony and any directly related misdemeanor or
4 violation level offenses alleged to have occurred prior to the effective date of this chapter in the
5 applicable county shall be filed under the law as it existed at the time of the alleged offense.

6 IV. The supreme court shall adopt rules and issue orders to effectuate the purposes of the
7 felonies first project.

8 V. During the implementation of the felonies first project, this chapter shall supersede any
9 statutory references to the filing of felony charges in circuit court district division or other statutes
10 that are inconsistent with this chapter.

11 VI. Prior to the implementation of this chapter in counties other than Cheshire county,
12 Strafford county, and Belknap county, the judicial council shall issue a report on the implementation
13 of this chapter to the senate president, the speaker of the house of representatives, and the
14 chairpersons of the senate and house judiciary committees. The judicial council shall survey the
15 municipalities and counties affected by the felonies first project in order to obtain cost and
16 effectiveness opinions. The judicial council shall evaluate the number of probable cause hearings
17 requested, waived, denied, and held, and the final disposition of each probable cause hearing held.
18 The judicial council shall also evaluate the number of discovery depositions requested, denied, and
19 approved. Beginning July 1, 2017 and ending in January 2020, the judicial council shall issue an
20 annual report on its recommendations and the implementation of this chapter to the senate
21 president, the speaker of the house of representatives, and the chairpersons of the senate and house
22 judiciary committees.

23 592-B:3 Commencement of Criminal Proceeding.

24 I. Criminal proceedings in superior court shall be commenced by the filing of a complaint by
25 the attorney general, county attorney or the county attorney's designee, or by indictment by the
26 grand jury. If a complaint is filed, the accused shall subsequently be indicted by a grand jury or
27 waive grand jury indictment pursuant to RSA 601:2 for the case to proceed.

28 II. The complaint shall be addressed to the court and shall set forth by name or
29 description the party accused and the offense charged. The description of an accused may
30 include an identifiable ridge skin impression or a DNA profile. A complaint that contains only
31 an identifiable ridge skin impression or DNA profile, and that alleges one or more of the
32 following offenses shall, upon its filing, toll the applicable statute of limitations under RSA 625:8
33 for:

- 34 (a) Capital murder under RSA 630:1.
- 35 (b) First degree murder under RSA 630:1-a.
- 36 (c) Second degree murder under RSA 630:1-b.

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- 1 (d) Manslaughter under RSA 630:2.
- 2 (e) Negligent homicide under RSA 630:3.
- 3 (f) First degree assault under RSA 631:1.
- 4 (g) Second degree assault under RSA 631:2.
- 5 (h) Aggravated felonious sexual assault under RSA 632-A:2.
- 6 (i) Felonious sexual assault under RSA 632-A:3.
- 7 (j) Kidnapping under RSA 633:1.
- 8 (k) Arson under RSA 634:1, I-III.
- 9 (l) Robbery under RSA 636:1.

10 592-B:4 Warrants. A justice of the peace or justice of the superior or circuit court, upon such
11 complaint or indictment, may issue a warrant for the arrest of the person so charged with an offense
12 committed or triable in the county, directed to the sheriff of any county or his deputy or to any
13 constable or police officer of any town in the county.

14 592-B:5 When Warrants Returnable to Superior Court. If such warrant is issued, it shall be
15 made returnable before the superior court having jurisdiction over the case and not elsewhere.

16 592-B:6 Discovery.

17 I. Prior to indictment, the accused shall have the same rights to discovery and deposition as
18 the accused has subsequent to indictment, provided that all judicial proceedings with respect thereto
19 shall be within the jurisdiction of the superior court, and notice of petition and hearing shall be given
20 to the county attorney, or to the attorney general if the attorney general shall have entered the case.

21 II. For incarcerated defendants, the state shall provide or make available to defense counsel,
22 or directly to the defendant if he or she is not represented by an attorney, copies of all discovery in its
23 possession, no more than 10 calendar days after the arraignment of the defendant, unless otherwise
24 ordered by the court. For non-incarcerated defendants, the state shall provide or make available to
25 defense counsel, or directly to the defendant if he or she is not represented by an attorney, copies of
26 all discovery in its possession, no more than 20 calendar days after the arraignment of the
27 defendant, unless otherwise ordered by the court. The state may request an extension of the
28 discovery deadlines for complex case types.

29 III. The court may, upon motion, authorize the delay of the provision of discovery materials
30 to the defense. Under such circumstances, the court shall make findings in support of its order and
31 shall set a new date for the provision of such materials to the defense.

32 IV. If the court has determined that discovery has not been provided pursuant to the
33 timeline established in paragraph II or III, and the defendant has not been indicted, the court shall
34 schedule a probable cause hearing without unreasonable delay as a matter of right.

35 V. The state shall have a continuing obligation to provide discovery to defendants as it
36 becomes available.

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1 592-B:7 Probable Cause.

2 I. A defendant may challenge probable cause during the period from arrest to indictment by
3 motion requesting a probable cause hearing under the following conditions:

4 (a) A complaint has been filed in superior court;

5 (b) The defendant has not been indicted by the grand jury; and

6 (c) The defendant asserts a claim that a material element of the charge is without
7 factual basis or that the charge is legally insufficient to constitute a felony offense.

8 II. Upon review of the motion, the court shall determine whether a hearing is necessary to
9 assist the court in its determination of probable cause. The court shall not unreasonably deny a
10 request for a hearing. If a hearing is scheduled, it shall be held as soon as the court docket permits,
11 but in any event within 10 days of the filing of the motion if the defendant is incarcerated and within
12 20 days of the filing of the motion if the defendant is not incarcerated.

13 III. If an arrest is supported by an affidavit that was filed under seal, and the affidavit
14 remains under seal at the time of the request for a probable cause hearing, a hearing shall be
15 scheduled.

16 IV. If a hearing is held, the state shall bear the burden of proving there is probable cause to
17 believe that a felony has been committed and that the person charged has committed it. At the
18 hearing, the defendant may call witnesses, cross-examine witnesses, and present evidence.

19 592-B:8 Dispositional Conference. Upon entry of a plea of not guilty, the case shall be scheduled
20 for a dispositional conference in accordance with superior court rules.

21 249:3 Competency; Commitment for Evaluation. Amend RSA 135:17, I(a)-(b) to read as follows:

22 I.(a) When a person is charged or indicted for any offense, or is ~~[bound over by any district or~~
23 ~~superior court to await]~~ ***awaiting*** the action of the grand jury ***on any felony***, the ~~[district]~~ ***circuit*** or
24 superior court before which he or she is to be tried, if a plea of insanity is made in court, or said court is
25 notified by either party that there is a question as to the competency or sanity of the person, may make
26 such order for a pre-trial examination of such person by a qualified psychiatrist or psychologist on the
27 staff of any public institution or by a private qualified psychiatrist or psychologist as the circumstances
28 of the case may require, which order may include, though without limitation, examination at the secure
29 psychiatric unit on an out-patient basis, the utilization of local mental health clinics on an in- or out-
30 patient basis, or the examination of such person, should he or she be incarcerated for any reason, at his
31 or her place of detention by qualified psychiatrists or psychologists assigned to a state or local mental
32 health facility. Such pre-trial examination shall be completed within 45 days in the case of a person
33 being held at a county correctional facility, otherwise 90 days after the date of the order for such
34 examination, unless either party requests an extension of this period. For the purposes of this
35 paragraph and RSA 135:17-a, III, “qualified” means board-eligible or board-certified in forensic
36 psychiatry or psychology, or demonstrated competence and experience in completing court-ordered

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1 forensic criminal evaluations. A licensed out-of-state psychiatrist or psychologist who meets the
2 definition of qualified may also conduct evaluations under this paragraph and RSA 135:17-a, III.

3 (b) In cases where the person is being held at a county correctional facility *or the New*
4 *Hampshire state prison*, the facility may request a pre-trial examination of such person for the
5 purpose of determining if the person is competent to stand trial. Such request shall be reviewed, and
6 a decision rendered by the district or superior court before which he or she is to be tried.

7 249:4 Competency; Commitment for Evaluation. Amend the introductory paragraph of RSA
8 135:17, II to read as follows:

9 II. The ~~[district]~~ **circuit** or superior court may allow the parties to obtain separate
10 competency evaluations if such request is made and the circumstances require it. The competency
11 evaluations shall address:

12 249:5 Study, Treatment and Care of Inebriants; Acceptance and Admissions. Amend RSA
13 172:13, II to read as follows:

14 II. When a person is indicted for any felony~~[-is bound over by any district or municipal court~~
15 ~~to await]~~ **or is awaiting** the action of the grand jury on any felony, or is charged with a
16 misdemeanor, and question as to the drug or alcohol dependency of the person is raised by either
17 party, any justice of the superior~~[-district]~~ or ~~[municipal]~~ **circuit** court **having jurisdiction over**
18 **the matter** may, after hearing, order such person to be examined in accordance with the instructions
19 of the commissioner to determine whether said person is drug or alcohol dependent. The
20 commissioner shall report the results of the examination and his findings to the court in writing.

21 249:6 Jurisdiction and Procedure Generally; Superior Court. Amend RSA 592-A:1 to read as
22 follows:

23 592-A:1 Superior Court. The superior court has jurisdiction of all criminal cases and
24 proceedings; but it may dismiss a prosecution originally begun therein which is within the
25 jurisdiction of a ~~[district or municipal]~~ **circuit** court.

26 249:7 Search Warrants; Requisites of Warrant. Amend RSA 595-A:2 to read as follows:

27 595-A:2 Requisites of Warrant. Search warrants shall designate or describe the person,
28 building, vessel, or vehicle to be searched and shall particularly describe the property or articles to
29 be searched for. They shall be substantially in the form prescribed in RSA 595-A:3 and shall be
30 directed to a sheriff or his deputy or to a constable or police officer, commanding him to search in the
31 daytime, or if the warrant so directs, in the nighttime, the person, building, vessel, or vehicle where
32 the property or articles for which he is required to search are believed to be concealed, and to bring
33 such property or articles when found, and the persons in whose possession they are found, before any
34 ~~[district]~~ **circuit** or ~~[municipal]~~ **superior** court named therein.

35 249:8 Preliminary Examinations; Adjournments. Amend RSA 596-A:1 to read as follows:

36 596-A:1 Adjournments. When an accused person is brought before a ~~[district or municipal]~~

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1 *circuit* court, upon a warrant or complaint, for trial [~~or preliminary examination~~], the proceedings
2 may be adjourned for cause, from time to time, as shall be adjudged reasonable, and the accused may
3 be detained in custody, or required to recognize, with or without sureties, for [~~his~~] ***the accused's***
4 appearance, as the nature of the case may require.

5 249:9 Bail and Recognizances; Probationees and Parolees. Amend RSA 597:1-d, I to read as
6 follows:

7 I. If there is a judicial finding of probable cause to believe that a person has committed a
8 violation of RSA 630, RSA 631, RSA 632-A:2-4 or RSA 633:1-3 from an arrest warrant affidavit [~~or an~~
9 ~~affidavit issued pursuant to district court administrative order number 91-03 or any other district court~~
10 ~~administrative order which supercedes it~~] and the person is on probation or parole for a conviction of a
11 violent crime listed in RSA 651:4-a or a substantially similar crime in any state or federal court in this
12 or any other state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or
13 possession of the United States, it is presumed that release on bail and imposition of any condition or
14 set of conditions listed in RSA 597:2 will not reasonably assure the appearance of the person as
15 required and will endanger the safety of the person or of any other person or the community.

16 249:10 Bail and Recognizances; When Requirable. Amend RSA 597:5 to read as follows:

17 597:5 When Requirable. Every court and justice may, when a person is accused of an offense in
18 which said court or justice is authorized to receive bail, release said person on personal recognizance
19 or require [~~him~~] ***said person*** to recognize, with sureties, to appear at a future time before [~~himself~~]
20 ***said court or justice*** or any other competent tribunal. ***Bail in felony cases is returnable only to***
21 ***the superior court.***

22 249:11 Chapter Heading. Amend the chapter heading of RSA 599 to read as follows:

CHAPTER 599

APPEALS FROM CONVICTIONS IN [~~MUNICIPAL OR DISTRICT~~] ***CIRCUIT*** COURT

24 249:12 Appeals From Convictions in Circuit Court. Amend RSA 599:1 to read as follows:

25 599:1 Appeals. A person convicted by a [~~district~~] ***circuit*** court of a class A misdemeanor, at the
26 time the sentence is declared, may appeal therefrom to obtain a de novo jury trial in the superior
27 court, which shall hear the appeal. The appeal shall be entered by the defendant at the next return
28 day unless for good cause shown the time is extended by the superior court. If, after a jury trial in
29 the superior court, the defendant is found guilty, the superior court shall sentence the defendant,
30 and the defendant may appeal questions of law arising therefrom to the supreme court. In the event
31 the defendant waives the right to jury trial after the case has been appealed, the superior court shall
32 forthwith remand the case to the [~~district~~] ***circuit*** court for imposition of the sentence originally
33 imposed by the [~~district~~] ***circuit*** court, and the defendant may appeal questions of law arising
34 therefrom to the supreme court. In all misdemeanor cases which are appealed to superior court[~~or~~
35 ~~in which defendants are bound over~~], it shall be the duty of the superior court to transmit to the
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1 justice of the [~~district~~] **circuit** court, within 10 days after the case is finally disposed of, a certificate
2 showing the final disposition of the case.

3 249:13 Indictments, Informations, and Complaints; Waiving Indictment. Amend RSA 601:2 to
4 read as follows:

5 601:2 Waiving Indictment. Any person who has been [~~bound over or~~] committed by a justice [~~or~~
6 ~~district or municipal court under the provisions of RSA 592 A:4 or 6~~] for trial in the superior court
7 upon a complaint charging a crime not punishable by death, and who desires to waive indictment,
8 [~~may apply in writing to the superior court for prompt arraignment upon such complaint~~] **shall**
9 **notify the court.** Upon [~~the filing of such an application,~~] **such notification, the attorney**
10 **general or** the county attorney may, with the approval of the court, proceed against the defendant
11 by complaint, and in such case [~~he~~] **the defendant** shall be held to answer and the court shall have
12 as full jurisdiction of the complaint as if an indictment had been found. The arraignment of the
13 defendant shall be at such time as the court may designate. Every person when so committed [~~or~~
14 ~~bound over~~] upon such a complaint shall be notified by the court of his right to apply for waiver of
15 indictment and prompt arraignment as aforesaid.

16 249:14 Arrests in Criminal Cases; Place and Time of Detention. Amend RSA 594:20-a to read as
17 follows:

18 594:20-a Place and Time of Detention.

19 I. When a person is arrested with or without a warrant he or she may be committed to a
20 county correctional facility, to a police station or other place provided for the detention of offenders,
21 or otherwise detained in custody; provided, however, that he or she shall be taken before a [~~district~~]
22 **circuit** court, **or a superior court in the case of felony complaints and misdemeanors and**
23 **violation level charges that are directly related to those felonies**, without unreasonable delay,
24 but not exceeding 24 hours, Saturdays, Sundays, and holidays excepted, to answer for the offense.

25 II. Notwithstanding the provisions of paragraph I, defendants detained under RSA 173-B
26 shall have timely access to a bail hearing by telephonic means or otherwise as determined by the
27 [~~district~~] **circuit** court **or the superior court in the case of felony complaints and**
28 **misdemeanors and violation level charges that are directly related to those felonies.**

29 249:15 Indictments, Informations, and Complaints; Additional Charges. Amend RSA 601:3 to
30 read as follows:

31 601:3 Additional Charges. If the **attorney general or the** county attorney desires to charge a
32 defendant making application under RSA 601:2 with a crime or crimes not punishable by death other
33 than a crime charged in the complaint upon which the defendant has been committed [~~or bound~~
34 ~~over~~], the **attorney general or the** county attorney may, before consenting to such application,
35 prepare a complaint or complaints charging such other crime or crimes and serve the same upon the
36 defendant in order that he may have an opportunity to waive indictment upon such other charges.

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1 ~~[If an application for waiver of indictment as to any such other charge is subsequently filed, the court~~
2 ~~shall, before approving such application, require an affidavit of service upon the defendant as part of~~
3 ~~the record of the case.]~~ The superior court shall by rule establish forms for application to waive
4 indictment under this chapter and may by rule make such other regulations of procedure under this
5 chapter as justice may require.

6 249:16 Repeal. The following are repealed:

- 7 I. RSA 502-A:13, relative to binding over by district court.
- 8 II. RSA 592-A:4, relative to binding over by justice.
- 9 III. RSA 596-A:2, relative to the record in preliminary examinations.
- 10 IV. RSA 596-A:3, relative to caution to accused in preliminary examinations.
- 11 V. RSA 596-A:4, relative to procedure in preliminary examinations.
- 12 VI. RSA 596-A:5, relative to testimony of the accused in preliminary examinations.
- 13 VII. RSA 596-A:6, relative to excluding witnesses in preliminary examinations.
- 14 VIII. RSA 596-A:7 relative to commitment and bail in preliminary examinations.
- 15 IX. RSA 597:6 relative to appearance at superior court.
- 16 X. RSA 597:11 relative to copies and binding over.
- 17 XI. RSA 604:1-a relative to discovery in criminal matters.

18 249:17 Application; Contingency. This act shall take effect on January 1, 2016 in Cheshire
19 county and Strafford county and on July 1, 2016 in Belknap county. This act shall take effect in the
20 remaining counties as of the date set forth in an order of the supreme court as provided for in
21 RSA 592-B:2, II, which order shall be issued at least 90 days prior to the effective date of the act in a
22 particular county. The repeals in section 16 of this act shall take effect on the date on which this act
23 is effective for all counties. In addition to such other notice as the supreme court deems necessary,
24 the court shall send copies of its orders implementing this act in counties other than Cheshire,
25 Strafford, and Belknap to the secretary of state and the director of legislative services.

26 249:18 Effective Date. This act shall take effect January 1, 2016.

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28 Approved: July 13, 2015

29 Effective Date: January 1, 2016