

SB 252-FN - AS INTRODUCED

2023 SESSION

23-0999

04/10

SENATE BILL ***252-FN***

AN ACT relative to release of a defendant pending trial.

SPONSORS: Sen. Soucy, Dist 18; Sen. D'Allesandro, Dist 20; Rep. Proulx, Hills. 15; Rep. Goley,
 Hills. 21; Rep. Heath, Hills. 41; Rep. Long, Hills. 23

COMMITTEE: Judiciary

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

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

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

10 (c) Detained; or

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

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

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

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

20 (c) Detained.

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

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

24 **(1) Except as provided in RSA 597:1-c, a person who is charged with**
25 **homicide under RSA 630; first degree assault under RSA 631:1; second degree assault**
26 **under RSA 631:2; domestic violence under RSA 631:2-b; aggravated felonious sexual assault**
27 **under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping under RSA**
28 **633:1; stalking under RSA 633:3-a; trafficking in persons under RSA 633:7; robbery under**
29 **RSA 636:1, III; possession, manufacture, or distribution of child sexual abuse images under**
30 **RSA 649-A; or computer pornography and child exploitation under RSA 649-B; shall not be**
31 **brought before a bail commissioner and shall, upon arrest, be detained pending**

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

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

21 2 Effective Date. This act shall take effect January 1, 2024.

**SB 252-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to release of a defendant pending trial.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
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

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

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 reports that in 2021 there were 5,312 cases that contained at least one of the charges listed in the bill and currently more than half of these case filings do not result in incarcerated arraignments. The Branch indicates 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 each court. The current hearing schedule has filled nearly all available video time slots with some county jails. As a result, the Branch assumes some incarcerated arraignments under the bill will result in transportation of the defendant to the courthouse. The Branch reimburses county sheriffs for transport to all courts and security in Superior Court.

Current practice in Superior Court is for defense counsel and the prosecutor to be physically in the courtroom with the judge during arraignment. The Judicial Branch anticipates this practice

would continue for the additional arraignments that would occur under this bill. Public defenders do not typically participate in Circuit Court arraignments. On January 1, 2024 with the effective date of the repeal of Felonies First, all arraignments under this bill will occur in the Circuit Court.

The majority of domestic violence and stalking cases in Circuit Court are filed in Manchester, Nashua, Rochester and Concord. Under current law, bail decisions made in the Circuit Court can be appealed for a de novo hearing in the Superior Court. The Judicial Branch assumes that, if enacted, this bill would result in more appeals to the Superior Court. The Judicial Branch indicates the fiscal impact is indeterminable and estimates at least 4 additional circuit court judges and 4 additional circuit court assistants would be required to manage the additional incarcerated arraignments in the circuit courts with the busiest criminal dockets. Those costs are approximately as follows:

Position	FY 2024	FY 2025	FY 2026
Judge (4)	\$1,292,036	\$1,297,924	\$1,304,204
Court Assistant (4)	\$264,884	\$279,304	\$294,404
Total:	\$1,556,920	\$1,577,228	\$1,598,608

In addition, each Sheriff transportation would require an additional sheriff transport fee. The rate for reimbursement of sheriffs for transportation is equal to the per diem rate paid to court security officers under the collective bargaining agreement, which is currently set at \$121.58 for a full day, \$60.79 for a half day through FY 2023. Rates beyond FY 2023 have not been established.

The Judicial Council indicates the bill would increase costs for the indigent defense system. The Council estimates, of the additional bail hearings estimated by the Judicial Branch (approximately 2,700), 90% or 2,430 of these defendants would be eligible for court-appointed counsel. Approximately 85% (2,295) of these clients would be represented by the New Hampshire Public Defender. The Public Defender is the State's institutional provider of indigent-defense services and has historically been able to absorb some increases in caseload without increasing its cost of operations. That is no longer the case. The New Hampshire's indigent defense system continues to struggle with an unprecedented caseload crisis. The pandemic and significant turnover have contributed to this crisis. The system does not have enough public defenders, contract attorneys or experienced private attorneys to meet the current need. This bill could require additional attorneys in all programs to meet the need for lawyers at incarcerated arraignments. The Council states there will also be increased costs to the indigent defense delivery system for appointments that have to be handled by either the contract attorney or assigned counsel system. It is assumed that 14% (340) clients will be represented by a contract

attorney. Contract attorneys are reimbursed on a flat-fee basis. Since the pandemic, some attorneys in this program have been reluctant to accept incarcerated clients. In FY 2023, the Judicial Council amended the terms of the contract attorney reimbursement model to include an additional fee for appointments of incarcerated clients. Due to hesitancy to visit houses of correction and the quick turnaround time for bail hearings, appointments for bail hearings have become challenging. Attorneys may be appointed to handle the bail hearing only. Contract attorneys would be reimbursed \$410 for a misdemeanor bail hearing and \$510 for a felony bail hearing. If the attorney accepts appointment for the full case, the cost of representation at the bail hearing is included in the flat fee. Private attorneys are now reimbursed \$90/hour including travel time to court and to meet with incarcerated clients. These attorneys may also be appointed for bail hearings only. The Council increase in bail hearings will result in an indeterminate increase for expenditures for the indigent defense system:

- It is not possible to quantify the impact on the Public Defender program.
- Assuming that half of the contract attorney appointments are for bail only, the increased expenditures will be between \$69,700 and \$86,700.
- The assigned counsel program would see an increase in reimbursements to reflect attorney time necessary for additional hearings.

The Department of Corrections indicates the fiscal impact to the Department is indeterminable. The Department states the average cost of incarcerating an individual in general population for the fiscal year ending June 30, 2022, was \$64,233. The average cost to supervise an individual by the Department's Division of Field Services for the fiscal year ending June 30, 2022, was \$688.

The New Hampshire Municipal Association indicates under this bill, police departments may need to transport persons arrested for the enumerated crimes to county correctional facilities to be held until the bail hearing, depending on the time of day and availability of defense attorneys and judges. The Association reports the typical arrest process takes between 2-3 hours and the amount of time depends on the availability of a bail commissioner or judge. In the cases where a bail commissioner is called, the longest period is typically waiting for the bail commissioner to arrive at the police department. In areas where few commissioners reside, that wait time can exceed an hour. Depending on the location of the department, the court, the county correctional facility, and the time of day, qualifying arrests under this bill may or may not result in increased costs. Qualifying arrests occurring during the working hours of the court or at departments near the courthouse and/or county correctional facility, may see decreased costs in the form of officer time and arrestee-transport requirements, but for arrests occurring at night or far from courts or county facilities such costs may increase. However, the Association can make no broad statement regarding costs as both defense attorneys and prosecutors routinely request bail hearings in

front of a judge after a bail commissioner has set bail, if they deem the facts warrant such a hearing.

The New Hampshire Association of Counties states it is not possible to estimate the additional county expenditures. The Association assumes the bill would increase pretrial detentions, but cannot determine how many cases there would be or what additional costs may be incurred.

AGENCIES CONTACTED:

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