

SB 252-FN - AS AMENDED BY THE HOUSE

3Jan2024... 2470h

2023 SESSION

23-0999

04/10

SENATE BILL

252-FN

AN ACT

relative to the release of a defendant pending trial, directing the establishment of an electronic monitoring program for criminal defendants released on bail, and making an appropriation therefor.

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

AMENDED ANALYSIS

This bill makes various amendments to the standards governing the release of a defendant pending the resolution of criminal charges. This bill further requires the chief justice of the superior court and the administrative judge of the circuit court to obtain the ability to equip and monitor defendants who have been arrested and released on bail with electronic monitoring and provides appropriations to the department of safety and the judicial branch for this purpose.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 the release of a defendant pending trial, directing the establishment of an electronic monitoring program for criminal defendants released on bail, and making an appropriation therefor.

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 **or**
4 **magistrate** of a person charged with an offense, the court **or magistrate** shall issue an order that,
5 pending arraignment or trial, the 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 ***I-a. The court shall have the authority under paragraph I to set a cash bail amount***
14 ***only if it is an amount which the defendant is able to meet.***

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

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

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

22 (c) Detained.

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

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

26 (1) ***Except as provided in RSA 597:1-c, a person who is charged with***
27 ***homicide under RSA 630; first degree assault under RSA 631:1; second degree assault***
28 ***under RSA 631:2; felony level domestic violence under RSA 631:2-b; aggravated felonious***
29 ***sexual assault under RSA 632-A:2; felonious sexual assault under RSA 632-A:3; kidnapping***

1 *under RSA 633:1; felony level stalking under RSA 633:3-a, VI(a); trafficking in persons*
2 *under RSA 633:7; robbery under RSA 636:1, III; possession, manufacture, or distribution of*
3 *child sexual abuse images under RSA 649-A; or computer pornography and child*
4 *exploitation under RSA 649-B; shall not be brought before a bail commissioner and shall,*
5 *upon arrest, be detained pending arraignment before the court. Arraignment shall occur*
6 *no later than 24 hours after the arrest. In the case of a person arrested when the court is*
7 *not open within the next 24 hours, a decision on bail shall be made by a magistrate within*
8 *24 hours of the arrest. At the person's appearance before the court or magistrate, the court*
9 *or magistrate shall order that the person be detained pending trial if the court or*
10 *magistrate determines that there is substantial evidence to believe that release of the*
11 *person is a danger to that person or the public. For purposes of this subparagraph,*
12 *"substantial evidence" shall be more than a preponderance of evidence and less than clear*
13 *and convincing evidence. In determining whether release will endanger the safety of that*
14 *person or the public, the court or magistrate may consider all relevant and material*
15 *factors presented pursuant to paragraph IV. If the court or magistrate does not find that*
16 *there is substantial evidence that the person must be detained, the court or magistrate*
17 *shall order the person released pursuant to subparagraph I(a) or subparagraph I(b), or, if*
18 *applicable, temporarily detained pursuant to subparagraph I(d). In any case where a*
19 *protective order is issued by the court or magistrate related to any of the crimes listed in*
20 *this subparagraph, a person may be released only with electronic monitoring in order to*
21 *ensure the safety of any alleged victim. Any violation of the conditions of the release with*
22 *electronic monitoring shall be immediately reported to the law enforcement agency in the*
23 *jurisdiction where the violation occurred, which, if there is probable cause to establish*
24 *such violation, shall cause the person to be arrested forthwith. A person arrested for*
25 *violating the conditions of his or her bail for an offense listed in this subparagraph shall*
26 *be held until they can be brought before the court at the first available date. If at a*
27 *subsequent hearing, the court finds probable cause exists that the person violated the*
28 *conditions of his or her bail for any of the crimes listed in this subparagraph, such*
29 *violation shall be prima facie evidence of dangerousness and the defendant shall be held*
30 *pending trial. The court may seek reimbursement of the cost of electronic monitoring in*
31 *accordance with the provisions in paragraph VI(b).*

32 (2) If a person is charged with any **other** criminal offense, [an offense listed in RSA
33 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged
34 with a violation of a protective order issued under RSA 173-B,] the court **or magistrate** may order
35 preventive detention without bail, or, in the alternative, may order restrictive conditions including
36 but not limited to electronic monitoring and supervision, only if the court **or magistrate** determines
37 by clear and convincing evidence that release will endanger the safety of that person or the public,

except as provided in paragraph VI. In determining whether release will endanger the safety of that person or the public, the court *or magistrate* may consider all relevant factors presented pursuant to paragraph IV. *The court shall have the authority to set a cash bail amount only if it is an amount which the defendant is able to meet.*

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

VI. If a person is charged with violation of a protective order issued under RSA 173-B or RSA 633:3-a^[5]:

(a) The person shall be detained without bail pending arraignment *by the court* pursuant to RSA 173-B:9, I(a). *Arraignment for a person charged with violation of a protective order issued under RSA 173-B or RSA 633:3-a shall not be heard by a magistrate.*

(b) *If the court releases the person, the court shall order electronic monitoring of the person while released.*

(1) *The court shall develop uniform criteria to evaluate and determine whether a person is indigent or not indigent for the purpose of the person's ability to repay the cost of electronic monitoring. Based on the criteria, the court shall render a finding of indigent or not indigent for the purpose of the person's ability to repay the cost of electronic monitoring.*

(2) *If the court finds that the person is not indigent for the purpose of repaying the cost of electronic monitoring, the court shall order that the person reimburse the court for payment of the cost of electronic monitoring unless the person's case terminates without a conviction for any offense. For purposes of this subparagraph, a conviction shall include any plea of guilty or nolo contendere to any originally charged offense or any greater or lesser related offense. If the person's case terminates without a conviction for any offense, the person shall not be liable to pay the cost of the electronic monitoring. The court may extend the time period for repayment in its discretion to allow the person time to make the repayment, except that in no case shall the time period exceed one year from the date the case was closed.*

(3) *If the court finds that the person is indigent for the purpose of repaying the cost of electronic monitoring, the person shall not be liable to pay the cost of electronic monitoring.*

(c) *A law enforcement officer shall have probable cause to arrest any person who is released pursuant to this paragraph with electronic monitoring upon probable cause that the person has violated the monitoring conditions imposed by the court. The court employee or agent who is tasked with monitoring the released person shall inform the law enforcement agency in the appropriate jurisdiction of any violation of the monitoring conditions.*

1 ***(d) Unless pursuant to a search warrant, a law enforcement officer shall not be***
2 ***provided access to any data associated with the electronic monitoring of the released***
3 ***person, including but not limited to location data, for any purpose other than the***
4 ***investigation of non-compliance with the monitoring conditions imposed by the court.***

5 3 New Section; Bail and Recognizances; General Provisions; Electronic Monitoring. Amend RSA
6 597 by inserting after section 2-b the following new section:

7 597:2-c Electronic Monitoring Program to be Established.

8 I. In this section, "electronic monitoring" means tracking the location of an individual
9 through the use of physical equipment or software that is capable of determining or identifying the
10 monitored individual's presence or absence at a particular location, including but not limited to:

11 (a) Radio frequency signaling technology, which detects if the monitored individual is or
12 is not at an approved location and notifies the monitoring agency of the time that the monitored
13 individual either leaves the approved location or tampers with or removes the monitoring device; or

14 (b) Active or passive global positioning system technology, which detects the location of
15 the monitored individual and notifies the monitoring agency of the monitored individual's location.

16 II. The chief justice of the superior court and the administrative judge of the circuit court
17 shall obtain the ability to equip and monitor defendants who have been arrested and released on bail
18 with electronic monitoring. The chief justice of the superior court and the administrative judge of
19 the circuit court may contract with a private company, enter into a memorandum of understanding
20 with a government agency, or utilize their own personnel, subject to legislative appropriation, to
21 obtain such ability to both equip and monitor.

22 4 Appropriation; Department of Safety; Division of State Police and the New Hampshire
23 Judicial Branch.

24 I. The sum of \$750,000 is hereby appropriated in the fiscal year ending June 30, 2024, to the
25 department of safety, division of state police, to develop and implement a system to electronically
26 share an individual's bail condition status with law enforcement.

27 II. The sum of \$986,000 is hereby appropriated in the fiscal year ending June 30, 2024, to
28 the judicial branch, to develop and implement a judicial branch bail data platform to enable
29 electronic sharing of an individual's bail condition status with law enforcement.

30 III. The appropriations in paragraphs I and II shall not lapse. The governor is authorized to
31 draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

32 5 Effective Date.

33 I. Sections 1 and 2 of this act shall take effect January 1, 2025.

34 II. The remainder of this act shall take effect June 30, 2024.

SB 252-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2023-2470h)

AN ACT relative to the release of a defendant pending trial, directing the establishment of an electronic monitoring program for criminal defendants released on bail, and making an appropriation therefor.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General Fund			
Appropriations	\$1,736,000	\$0	\$0	\$0
<i>Funding Source(s)</i>	General Fund			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill makes various amendments to the standards governing the release of a defendant pending the resolution of criminal charges. This bill further requires the Chief Justice of the Superior Court and the Administrative Judge of the Circuit Court to obtain the ability to equip and monitor defendants who have been arrested and released on bail with electronic monitoring and provides non-lapsing appropriations to the Department of Safety and the Judicial Branch for this purpose.

The Department of Safety indicates the fiscal impact of this bill is indeterminable, however the Department anticipates it will be significant. The bill would require certain defendants to be detained until they can be arraigned before a court rather than given the opportunity for the defendant to make bail. The Department states this will require additional resources for all law enforcement agencies to account for housing defendants including manpower, meals, and costs related to safety considerations. The county jails could be utilized for this purpose and it may increase the workload for the county jails. The Department indicates these costs would be in addition to the funds appropriated in the bill to establish a reporting system. In addition, the Department states it is unknown how the electronic monitoring system will impact law enforcement.

The Judicial Branch indicates the courts do not currently administer electronic monitoring and the Branch cannot project the cost for contracting for these services or for the cost of additional staff. The Branch estimates the cost of hiring the magistrates would exceed \$2 million per year. The Branch anticipates additional expenditures related to hearings on the ability of defendants to pay for electric monitoring in over 1,000 estimated cases a year.

The New Hampshire Municipal Association (NHMA) indicates, for the enumerated crimes, the bill would eliminate the use of the bail commissioner and set a time line for when a court must hold a bail hearing. If the court or magistrate determines there is substantial evidence to believe that the person charged is a threat to him/herself or others, the person shall be held pending trial. If the court does not make such a finding, then the court would proceed in the ordinary manner of setting bail and the person would not be held. In response, municipal police departments may need to transport persons arrested for the enumerated crimes to county correctional facilities to be held until the bail hearing. This would depend on the time of day and availability of defense attorneys and judges. The Association indicates that typical arrest processing takes between 2-3 hours and the timing depends on the availability of a bail commissioner or judge. In the case of offenses where a bail commissioner is called, the longest period of time is waiting for the bail commissioner to arrive at the police department. In areas where few commissioners reside, the wait time can exceed an hour. Depending on the location of the police department, the court, the county correctional facility, and the time of day, qualifying arrests under this legislation may or may not see increased costs. Qualifying arrests occurring during the working hours of the court or at departments in close proximity to the courthouse and/or county correctional facility, may see decreased costs in the form of officer time and arrestee-transport requirements, but arrests occurring at night or far from courts or county facilities may see increased costs. However, no broad statement can be made as to 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 indicates while there will be insignificant costs to the county attorneys' offices, costs to the correctional facilities are indeterminable and may include increased salaries and technology costs to execute hearings outside of the current schedule with the expanded magistrate program. In addition with the requirement for certain offenses to go in front of a judge, could lead to increased holding costs at the county correctional facilities.

This bill does not establish or fund magistrate positions within the Judicial Branch.

AGENCIES CONTACTED:

Department of Safety, Judicial Branch, New Hampshire Municipal Association and New Hampshire Association of Counties