

HB 610-FN - AS AMENDED BY THE SENATE

22Feb2023... 0471h

06/01/2023 2062s

06/01/2023 2083s

2023 SESSION

23-0370

05/04

HOUSE BILL

***610-FN***

AN ACT            expanding the definition of providers who can certify patients of the therapeutic cannabis program and relative to release of a defendant pending trial and relative to product labeling and information guide requirements for cannabis products and the prohibition of the sale of hemp products containing certain levels of THC.

SPONSORS:        Rep. Vail, Hills. 6; Rep. W. Thomas, Hills. 12; Rep. Cannon, Straf. 12

COMMITTEE:      Health, Human Services and Elderly Affairs

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AMENDED ANALYSIS

This bill:

I. Expands the definition of provider under the therapeutic cannabis program to include any individual licensed in New Hampshire to prescribe drugs to humans who holds an active registration from the United States Drug Enforcement Administration to prescribe controlled substances; and requires, for issuance of a registry identification card to a minor, certification from 2 providers, one of whom shall provide pediatric care.

II. Lists certain criminal 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, and makes an appropriation to the division of state police to develop and implement a system to electronically share an individual's bail condition status with law enforcement.

III. Requires, for issuance of a registry identification card to a minor, certification from 2 providers, one of whom shall provide pediatric care.

IV. Empowers the therapeutic cannabis oversight board to regulate and review the labels and educational materials of cannabis materials.

V. Prohibits the sale of hemp products containing certain amounts of THC.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    expanding the definition of providers who can certify patients of the therapeutic cannabis program and relative to release of a defendant pending trial and relative to product labeling and information guide requirements for cannabis products and the prohibition of the sale of hemp productss containing certain levels of THC.

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

1            1 New Subparagraph; Use of Cannabis for Therapeutic Purposes; Definition of Provider. Amend  
2 RSA 126-X:1, VII(a) by inserting after subparagraph (4) the following new subparagraph:

3                    (5) Any New Hampshire provider who is licensed to prescribe drugs to humans and  
4 who possesses an active registration from the United States Drug Enforcement Administration to  
5 prescribe controlled substances.

6            2 Registry Identification Cards; Qualifications for Minors. Amend RSA 126-X:5, V(a) to read as  
7 follows:

8                    (a) A custodial parent or legal guardian responsible for health care decisions for the  
9 qualifying patient submits a written certification from 2 providers, one of whom shall be a  
10 [~~pediatrician~~] **provider who provides pediatric care.**

11            3 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, I-III(a) to  
12 read as follows:

13                    I. Except as provided in paragraph **III or** VI, upon the appearance before the court of a  
14 person charged with an offense, the court shall issue an order that, pending arraignment or trial, the  
15 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;

20                    (c) Detained; or

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

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

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

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

(c) Detained.

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

(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; or computer pornography and child exploitation under RSA 649-B; 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.*

4 Appropriation; Department of Safety; Division of State Police. The sum of \$1,000,000 is hereby appropriated in the fiscal year ending June 30, 2023, to the department of safety, division of state police, to develop and implement a system to electronically share an individual's bail condition

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1 status with law enforcement. This appropriation shall not lapse. The governor is authorized to  
2 draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

3 5 New Subparagraph; Use of Cannabis for Therapeutic Purposes. Amend RSA 126-X:12, IV by  
4 inserting after subparagraph (h) the following new subparagraph:

5 (h) Developing, reviewing, and updating cannabis product labels and educational  
6 material about the risks of cannabis use to be provided to qualifying patients by alternative  
7 treatment centers and certifying medical providers.

8 6 New Section; Agriculture, Horticulture and Animal Husbandry; Hemp; Hemp-Derived  
9 Products Containing THC Prohibited. Amend RSA 439-A by inserting after section 439-A:3 the  
10 following new section:

11 439-A:4 Hemp-Derived Products Containing THC Prohibited. Nothing in this chapter shall be  
12 construed to authorize the sale of products that are derived from hemp which contain natural or  
13 synthetic tetrahydrocannabinol (THC) greater than 0.3 percent on a dry weight basis, which appear  
14 in any formulation, including delta-8 THC, delta-9 THC, or any other THC isomer variant.

15 7 Effective Date.

16 I. Section 4 of this act shall take effect June 30, 2023.

17 II. Section 3 of this act shall take effect January 1, 2024.

18 III. The remainder of this act shall take effect 60 days after its passage.

**HB 610-FN- FISCAL NOTE**

AS AMENDED BY THE SENATE (AMENDMENTS #2023-2062s and #2023-2083s)

AN ACT                      expanding the definition of providers who can certify patients of the therapeutic cannabis program and relative to release of a defendant pending trial and relative to product labeling and information guide requirements for cannabis products and the prohibition of the sale of hemp products containing certain levels of THC.

**FISCAL IMPACT:**    ☒ State                      ☒ County                      ☒ Local                      ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<b>Appropriation</b>	\$1,000,000	\$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

**LOCAL:**

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

**METHODOLOGY:**

This bill expands the definition of providers able to certify patients of the therapeutic cannabis program. The Department of Health and Human Services states that this component of the bill will have no fiscal impact.

In addition, the bill contains a nonlapsing general fund appropriation to the Department of Safety in FY23 for the purpose of developing and implementing a system to electronically share an individual's bail condition status with law enforcement. Although the Department was not contacted for a fiscal note worksheet relative to this component of the bill, it did offer information on this subject during development of the state budget. At that time, the Department indicated that an appropriation of \$750,000 would likely be sufficient to cover its share of the cost of the proposed system. The Judicial Branch was likewise not contacted for a fiscal note worksheet relative to this provision, but supplied information during the budget process. At that time, the Branch stated that in addition to costs incurred by the Department of

Safety, another \$986,015 during the FY24/25 biennium would be needed to support a bail data platform on the Judicial Branch side. These costs can be broken down as follows: \$690,446 for development and implementation during year one, and \$295,569 for implementation in year two. The latter amount would presumably be the cost of implementation in subsequent years as well.

Finally, the bill amends the statute governing bail and pre-trial 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.

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, 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.

In addition to the impacts above, the bill contains a nonlapsing general fund appropriation to the Department of Safety in FY23 for the purpose of developing and implementing a system to electronically share an individual's bail condition status with law enforcement. Although the Department was not contacted for a fiscal note worksheet relative to this component of the bill, it did offer information on this subject during the state budget process. The Department indicated that an appropriation of \$750,000 would likely be sufficient to cover its share of the cost of the proposed system.

**AGENCIES CONTACTED:**



Department of Health and Human Services, Judicial Branch, Judicial Council, Department of Corrections, New Hampshire Municipal Association and New Hampshire Association of Counties