

HB 503-FN - AS INTRODUCED

2023 SESSION

23-0628

04/05

HOUSE BILL ***503-FN***

AN ACT relative to the rights afforded to a person accused of a crime.

SPONSORS: Rep. Hynes, Hills. 2

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill codifies certain rights of an accused person in the criminal process, increases the penalty assessment in cases involving charges related to an alcohol or controlled drug offense, and requires those penalty assessments to be used by the state crime lab.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 rights afforded to a person accused of a crime.

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

1 1 New Sections; Rights of Accused; Rights Protected. Amend RSA 604 by inserting after section
2 3 the following new sections:

3 604:4 Constitutional Rights of Accused Protected. Nothing in this chapter is meant to limit the
4 constitutional rights of the accused.

5 604:5 Speedy Trial.

6 I. A defendant shall have a right to a speedy trial. Trials in the district court shall be held
7 within 90 days from the date of the arrest unless this right is waived by the defendant. If a trial is
8 not held within 90 days, the state shall show cause for why the case should not be dismissed. A
9 district court case shall be dismissed with prejudice for lack of speedy trial after 120 days.

10 II. In the superior court, a trial shall be held within 180 days from the date of arrest,
11 indictment, or de novo appeal, unless this right is waived by the defendant. If a trial is not held
12 within 180 days, the state shall show cause for why the case should not be dismissed.

13 604:6 Discovery Rights. A defendant shall be entitled to discovery within 30 days of the date of
14 arrest. Ongoing discovery shall promptly be provided as it is obtained by the state. A defendant
15 shall be entitled to all potentially exculpatory evidence. This shall apply to newly discovered
16 evidence after a case is completed. The defendant shall be entitled to a copy of their criminal record
17 prior to a bail hearing if the state uses the criminal record at the bail hearing.

18 604:7 Depositions. A defendant shall be entitled to depose any witness in their case. A
19 deposition shall take place within 30 days of request.

20 604:8 Preservation of Evidence. The state shall have the duty to preserve evidence in a case
21 until the case is completed, including any appeals. This duty shall apply to booking videos, body cam
22 videos, any audio or video recordings, and any drug or alcohol samples that were obtained. If any
23 such evidence being lost or destroyed, the state shall show cause as to why the case shouldn't be
24 dismissed. If the state shows good cause, then the factfinder may make a negative inference against
25 the state as it relates to the destruction of evidence.

26 604:9 Police Honesty. All persons are entitled to honesty in interacting with law enforcement
27 officers. No law enforcement officer shall lie during an interrogation or questioning in order to
28 obtain an incriminating statement from a person.

29 604:10 Right to Media. A defendant shall have the right to discuss his or her case including
30 through the media.

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1 604:11 Exculpatory Evidence Provided to the Grand Jury. A defendant shall be entitled to the
2 state presenting all exculpatory evidence to a grand jury.

3 2 Police Standards and Training Council; Penalty Assessment. Amend RSA 106-L:10 to read as
4 follows:

5 106-L:10 Penalty Assessment; Waiver of Penalty.

6 I. Every court shall levy a penalty assessment of \$2 or [24] **30** percent, whichever is greater,
7 on each fine or penalty imposed by the court for a criminal offense, including any fine or penalty for
8 a violation of RSA title XXI or any municipal ordinance, except for a violation of a municipal
9 ordinance relating to motor vehicles unlawfully left or parked. Notwithstanding any law or rule to
10 the contrary, the penalty assessment shall be levied in addition to the amount of the fine or penalty
11 imposed by the court.

12 ***I-a. Every court shall impose an additional penalty assessment of \$50 on every case***
13 ***involving a charge for an alcohol or controlled drug offense. This additional penalty shall***
14 ***be used to provide resources for the state crime lab to more quickly analyze alcohol and***
15 ***controlled drug samples.***

16 II. If multiple offenses are involved, the penalty assessment shall be imposed on the total
17 fine.

18 III. If a fine is suspended in whole or in part, the penalty assessment shall be reduced in
19 proportion to the suspension.

20 IV. The clerk of each court shall collect all penalty assessments and shall transmit the
21 amount collected under paragraphs [~~III~~] ***I, II, and III*** to the state treasurer for deposit in the
22 following funds. The state treasurer shall deposit 66.66 percent of the amount collected in the state
23 general fund, 16.67 percent of the amount collected in the victims' assistance fund, and 16.67 percent
24 of the amount collected in the judicial branch information technology fund. ***The clerk of each***
25 ***court shall collect the penalty assessments imposed under paragraph I-a and shall***
26 ***transmit the amount to the judicial branch information technology fund exclusively for use***
27 ***by the state crime lab.***

28 V. If it is determined by a court that the payment of all or any part of a penalty assessment
29 would work a hardship on the person convicted or on such person's immediate family, the court may
30 suspend the payment of all or any part of the assessment.

31 3 Effective Date. This act shall take effect January 1, 2024.

**HB 503-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the rights afforded to a person accused of a crime.

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	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Judicial Branch IT Fund, Victims Assistance Fund			

METHODOLOGY:

This bill codifies certain rights of an accused person in the criminal process, increases the penalty assessment in cases involving charges related to an alcohol or controlled drug offense, and requires those penalty assessments to be used by the state crime lab.

The Judicial Branch indicates the fiscal impact on the Branch is indeterminable. Over the last five years, there were on average more than 61,000 criminal cases filed annually in Circuit Court and over 9,000 criminal cases filed in Superior Court. Current assignments by public defenders to cases can exceed the 120 day limit described in this bill. The Judicial Branch assumes that resources would be added for public defenders such that the current time for a public defender to be assigned to the cases will occur within the time frames associated with this bill. In addition to condensing the criminal docket time line, the Judicial Branch assumes that the trial and discovery deadlines provided for in this bill would result in an increase in the number of pre-trial pleadings and hearings. The Judicial Branch assumes that, in order to meet the criminal case deadlines described in this bill, a substantial increase in the number of judges and court staff would be needed to handle the condensed trial schedule and number of additional hearings this bill would likely generate.

This bill also would increase the penalty assessment on each criminal fine or penalty imposed by the court from 24 to 30 percent, and would impose an additional penalty assessment of \$50 on every case involving a charge for an alcohol or controlled drug offense. This bill requires the

additional \$50 penalty assessment be transmitted "to the judicial branch information technology fund exclusively for use by the state crime lab."

Penalty assessments are distributed to three separate funds: NH Judicial Branch (NHJB) IT Dedicated Fund (1/6), Department of Justice (DOJ) Victims Assistance Fund (1/6), and the General Fund (2/3). The increase in penalty assessment from 24 to 30 percent would result in an increase in revenue to those three funds. The Judicial Branch estimates the increase would be approximately \$134,892 to the NHJB IT Dedicated Fund and to the DOJ Victims Assistance Fund, and an increase of \$539,406 to the General Fund. If the current trend of decreasing penalty assessments continues, this increase in revenue could decline over time.

The new additional \$50 penalty assessment would also result in increased revenue. Because it would be a new collection and the uncertainty of the number of cases that would be impacted due to the application described in the bill to charges "for an alcohol or controlled drug offense," the Judicial Branch is unable to estimate the amount of revenue it would generate. The creation of the additional funding stream would require modifications to the Judicial Branch's case management system to record the new revenue stream, and the accounting department would need to configure its process to account for the new revenue and distribution of funds. The modifications to the case management system would have a cost associated with it and may require involvement by the system vendor, which would be an additional expense.

The Judicial Council estimates there would be a significant but indeterminable cost associated with an expanded right to depositions in criminal cases. Under current law, a defendant may depose any expert witness in a felony case, or when a court determines that a deposition is necessary, or by agreement of the parties. This bill would expand the right to depose to any witness in a criminal case. The Council assumes attorneys in criminal cases will utilize the proposed change in law to conduct more depositions, potentially several in each case, and will also spend additional time preparing for those depositions. Conducting additional depositions will result in more attorney time spent on each case and will likely have an adverse impact on attorney caseloads for public defender and contract counsel. Direct billing of attorney time by assigned counsel in indigent criminal cases will almost certainly increase as well. The Council indicates attorney time spent preparing for and conducting depositions is not tracked and the cost of the increased attorney time spent on cases is therefore indeterminable. The Council anticipates that the ancillary non-legal services associated with depositions will also increase. In FY 2022, the Council paid an estimated \$156,000 to vendors for depositions or related transcription services in criminal cases. This bill would significantly increase the number of depositions conducted in criminal cases and the corresponding need to pay vendors who provide deposition or transcription services.

The Department of Safety states this bill would impose an additional penalty assessment of \$50 on every case involving a charge of alcohol or controlled substance. The additional penalty would provide resources for the state crime lab to more quickly analyze alcohol and control drug samples. The bill would also require the clerk of each court to collect the penalty assessment and transmit the amount to the judicial branch information technology fund for the exclusive use by the state crime lab. Since this would be collected through the court system the Department cannot estimate how much additional penalty assessment revenue would be generated therefore, the fiscal impact on the Department is indeterminable.

The New Hampshire Association of Counties states this bill would have no impact on county revenues or expenditures.

AGENCIES CONTACTED:

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