



The Senate of the State of New Hampshire

107 North Main Street, Concord, N.H. 03301-4951

RECEIVED
11-26-18

November 26, 2018

Via Hand Delivery to:

Honorable Christopher T. Sununu
Governor, State of New Hampshire
State House
107 North Main Street
Concord, NH 03301

**RE: AMENDED Final Report of the Commission on Pretrial Detention,
Pretrial Scheduling, and Pretrial Services**

Dear Governor Sununu,

Please accept this as the Commission's final report with all correspondence, agendas, minutes, reports and data attached. Here are the Commission's affirmative recommendations:

- 1.) The General Court directs that, to the extent practicable, courts and jails shall track bail decisions/defendants and provide data on the impact of SB 556, including, but not limited to, the commission of a new offense while on bail and the types of offenses, failures to appear, etc. This was a unanimous recommendation.
- 2.) In order to help lower the failure to appear rate, New Hampshire Circuit and Superior Court shall adopt and the General Court shall fund a text messaging proposal as found in Attachment A. This was a unanimous recommendation.
- 3.) The General Court pays bail commissioner fees if defendant is indigent. This was a unanimous recommendation.
- 4.) The General Court reconstitutes this Commission with the formal addition of an appointee for the Association of NH County Attorneys and reviewing failure to appear reasons/rates. This was a unanimous recommendation.



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- 5.) The Commission agreed with Lt. Morrison's proposal to STRIKE "...the following conduct as evidence of posing a danger...", the so-called precursor language to dangerousness determination, and ADD "...the court may consider all relevant factors bearing on the issue of dangerousness." This was a unanimous recommendation.
- 6.) Consistent with recommendation #5, the Commission then recommended the specific dangerousness prongs/elements be deleted. All but Chief Shagoury supported this recommendation.
- 7.) The Commission recommends the General Court add the following as a new paragraph in RSA 597:2, III: "At the first appearance before the Court, evidence in support of preventive detention shall be made by offer of proof. At that time, the defendant may verbally request a subsequent bail hearing where live testimony is presented to the court. At any subsequent hearing such testimony may be presented via video conferencing, unless the Court determines that a witness's in-court presence is necessary. Any request by the defendant for in-court testimony shall be made by oral motion at the initial hearing or by written motion prior to the subsequent hearing. Any Order granting the defendant's request shall be distributed to the parties at least 48 hours prior to the subsequent hearing." This was a unanimous recommendation.
- 8.) The Commission recommends the General Court add the following as a new paragraph in RSA 597:2, III: "There is a rebuttable presumption that an alleged victim of a crime shall not be required to testify at a bail hearing. Nothing in this section shall preclude an alleged victim from voluntarily testifying at such a hearing. The State may present evidence of statements made in the course of an investigation through a law enforcement officer." All but Chief Shagoury supported this recommendation.

Consistent with its charge, the Commission solicited and received public input. Significant public input was received, particularly from the County Attorneys at two separate meetings.

I want to thank everyone for this time. Please let me know if you have any questions. Thank you.



The Senate of the State of New Hampshire

107 North Main Street, Concord, N.H. 03301-4951

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Feltes", with a stylized, sweeping flourish at the end.

Dan Feltes
Commission Chair
Senate District 15

Cc: Senate President Chuck Morse (by hand delivery)
House Speaker Gene Chandler (by hand delivery)
Senate Clerk Tammy Wright (by hand delivery)
House Clerk Paul Smith (by hand delivery)
State Librarian Michael York (by hand delivery)
Commission members (by email)

Bourque, Jessica

From: Hon. Susan Ashley <SAshley@courts.state.nh.us>
Sent: Thursday, October 25, 2018 5:20 PM
To: Feltes, Dan
Cc: Hon. David D. King; Hon. Edwin W Kelly; Gina Belmont; Kate E. Geraci
Subject: text messaging fiscal impact

Sen. Feltes,

In response to your request about the fiscal impact on the court to implement a text messaging system for criminal cases, we know that we would need a staff person dedicated to making such an endeavor work. Therefore, we offer the following description of the need and cost for such a position.

As text messaging has shown to reduce failures to appear at court hearings in other jurisdictions across the country, this year we built and piloted an initiative in divorce/parenting mediation to use text reminders about upcoming mediation sessions. This was a small project to create the infrastructure and to prove the concept. Based on the success of that effort and on similar efforts at other courts, we are ready to expand to other case types and circumstances where text reminders would likely assist with increasing attendance at court.

In 2017, there were nearly 75,000 criminal cases filed in the circuit and superior courts. These cases likely led to over 175,000 arraignments or trials. Criminal cases are the largest case type in the trial courts. We would benefit from the dedicated efforts of a person who would be hired to oversee the text messaging initiative and to influence issues around the failure to appear of defendants on bail. Initially, this person would help with developing requirements, design and testing of the text messaging application in criminal cases. This will lead to form and practice changes so that cell phone numbers are collected and recorded in the court's case management system consistently. Once the system is live, the role would be to monitor and enhance these efforts and others relating to the failure to appear of criminal defendants. Additional envisioned work includes assisting with streamlining criminal case process flows from the bail commissioner to the court and from the court to the defendant, other bail related court form development and improvement, input on issues related to the collection and analysis of failure to appear and other bail data, and involvement with bail commissioner education, support and coordination.

A part time bail reform coordinator at 29 hours per week would likely cost about \$47,065 per year, assuming a Labor Grade 30 on the NHJB matrix and about \$62,862 per year assuming a Labor Grade 42. A full time bail reform coordinator would likely cost about \$91,924 per year, assuming a Labor Grade 30 and \$111,778 at a Labor Grade 42. Additionally, we anticipate a nominal cost to configure the text messaging system to accommodate text messaging in criminal cases. That cost is under \$15,000 and would be absorbed by the NHJB.

I hope this is responsive to your request.

Judge Kelly will be attending the next committee meeting on Monday, and should be able to discuss further with the group.

Thanks,
Susan Ashley

**SENATE CALENDAR
NOTICE
FOR MEETINGS
STATUTORY COMMISSION**

Date: August 30, 2018

ORGANIZATIONAL MEETING

Monday

09/17/2018

(Day)

(Date)

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND
PRETRIAL SERVICES

597:43 - Chapter 366:11 - Laws of 2018

(Name of Committee)

(Bill #, Chapter # and Year) or (RSA#)

10:00 a.m.

Legislative Office Building 303

(Time)

(Location)

Senator Dan Feltes
First Named Member

Jessica Bourque 271-3067

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Meeting Minutes

September 17, 2018

Members Present: Sen. Dan Feltes, Rep. Renny Cushing, Rep. David Welch, Justice Tina Nadeau, Chief Andrew Shagoury, Lt. Mark Morrison, Atty. James Vara, Prof. Buzz Scherr, Atty. Randy Hawkes

The Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services met for their Organizational Meeting on September 17, 2018 in Room 303 of the Legislative Office Building and elected Senator Dan Feltes as the Chair and Representative David Welch as Vice Chair and Senator Dan Feltes as clerk.

After the election of the Chair, each member of the Commission provided thoughts for discussion consistent with the Commission mission. Then, the Commission condensed for further discussion the following topics to explore more thoroughly:

1. Recommendations from ICJJC
2. Implementation of SB 556
3. Current Inventory of Pre-Trial Services/SUD Services Plan
4. Text messaging reminder pilot results
5. Failure to appear and scheduling issues

The Commission then discussed future meeting dates and decided they will meet on, October 19th, October 22nd, and October 29th. The Chair asked for any public input. None was provided.

Meeting Adjourned.

**SENATE CALENDAR
NOTICE
FOR MEETINGS
STATUTORY COMMISSION**

Date: September 19, 2018

REGULAR MEETING

Friday

10/19/2018

(Day)

(Date)

**COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND
PRETRIAL SERVICES**

597:43 - Chapter 366:11 - Laws of 2018

(Name of Committee)

(Bill #, Chapter # and Year) or (RSA#)

12:00 p.m.

Legislative Office Building 301

(Time)

(Location)

Senator Dan Feltes
First Named Member

Jessica Bourque 271-3067

**COMMISSION ON PRETRIAL DETENTION, PRETRIAL
SCHEDULING, AND PRETRIAL SERVICES**

Friday, October 19, 2018

Agenda

- 1. Welcome**
- 2. Introductions**
- 3. Recommendations from ICJJC**
- 4. Discuss Recommendations from ICJJC**
- 5. Discussion of Process/On-the-Ground
Implementation of SB 556**
- 6. Public Testimony/Input**

**COMMISSION ON PRETRIAL DETENTION, PRETRIAL
SCHEDULING, AND PRETRIAL SERVICES**
Meeting Minutes
October 19, 2018

Members Present: Sen. Dan Feltes, Rep. Renny Cushing, Rep. David Welch, Rep. Gary Hopper, Justice Tina Nadeau, Chief Andrew Shagoury, Lt. Mark Morrison, Atty. James Vara, Prof. Buzz Scherr, Hon. Edwin Kelly, Atty. Randy Hawkes

The Commission debated and discussed the pre-set agenda. The Commission also heard from Pat Conway, Justin Hersh, Kevin St. James, Lara Saffo, and Natch Greyes.

Meeting Adjourned.

**Minutes of the Meeting of the Interbranch Criminal and Juvenile Justice Council's
Risk Assessment Subcommittee**

July 19, 2018, 105 South Pleasant Street, Concord, New Hampshire

The members in attendance: Mr. McAllister; Ms. Saffo; Chief Shagoury; Ms. Chaffee; Ms. Blodgett.
Also in attendance: Mr. Sexton; Ms. Dandrea.

Mr. McAllister called the meeting to order at approximately 10:45 a.m.

Subcommittee members introduced themselves, and Ms. Saffo explained that she was sitting in at the request of Amanda Sexton. Following introductions, Mr. McAllister asked if anyone was interested in chairing the subcommittee. Mr. McAllister was asked and accepted the chair position. It was noted that the Agenda included names of anticipated participants, as well as subcommittee members.

Members discussed general goals and agreed that the subcommittee should focus on presenting the pros and cons of various tools to the full ICJJC. It was agreed that the role of the subcommittee is not to make final decisions, but rather to do research and report back to the full Council at the September meeting.

Ms. Saffo discussed Grafton Superior Court's recent implementation of the VPRAI tool. She explained that the County Attorney's Office is considered Rater A and the court is Rater B. Ms. Saffo has communicated with her counterpart in Virginia about their use of this risk assessment. She noted that in Virginia, this assessment is used against the backdrop of a robust pretrial services program. Ms. Saffo referred members to § 19.2-120 of the Virginia Code. This statute creates a rebuttable presumption of danger to the community or risk of flight when the accused is charged with specific crimes.

Ms. Blodgett noted that original ICJJC risk assessment discussions envisioned use of a tool at the time of arrest, not just for pretrial services eligibility. Mr. McAlister noted that if the assessment were used early on in the process, it could minimize costs to law enforcement. Ms. Chaffee pointed out that another subcommittee was tasked with a review of pretrial services.

Chief Shagoury mentioned a George Mason study that showed an increase in failures to appear (FTA) and new arrests following implementation of the Kentucky risk assessment. He was asked about the cost to local police departments for an FTA. While it was not possible to give a dollar amount, he reported that they do consume officer time and resources. There was general discussion about getting the cost to the court from FTAs and the cost of having witnesses appear on a case that cannot go forward.

Members decided to focus on the following tools, several of which are currently being used in New Hampshire:

1. VPRAI (Grafton Pilot)
2. Arnold Foundation
3. ORAS Pretrial (Merrimack)
4. Strafford County
5. Rockingham County

Ms. Chaffee volunteered to draft a matrix of the different tools. Mr. McAlister will reach out to the superintendents to assist in developing an overview of the tools being used in NH. Chief Shagoury will summarize the findings of the George Mason study. Ms. Saffo will reach out to law enforcement to develop a cost for FTAs. Ms. Blodgett will contact Kate Geraci and Karen Gorham to invite them to our next meeting. She will ask that they share the following information regarding the pilot project:

Judicial Council Minutes
June 18, 2018

- A list of the data being collected by the court
- The status of the pilot (where has it been implemented, additional jurisdictions)
- The metrics that will be used to evaluate the pilot
- The cost to the court from FTAs
- The status of the text reminder program for criminal cases

The meeting ended at approximately 11:45 a.m.

New Hampshire - Virginia Pretrial Assessment Instrument (NH-VPAl) Feb 2018

Defendant's Name: _____ Today's Date: _____

Rater A's Name: _____ Rater B's Name: _____

Rater A's Title: _____ Rater B's Title: _____

Most serious charge: _____

Item	Rater A	Rater B
1. Active Community Supervision – At the time of the arrest, was the defendant on probation, parole, pretrial services, drug or mental health court, day reporting, or any other form of active criminal justice supervision? No = 0; Yes = 2		
2. Charge is Felony Drug, Theft, or Fraud – Is the current charge a felony <i>and</i> does the current charge involve drug, theft, or fraud? No = 0; Yes = 3		
3. Pending Charge – At the time of the arrest, was the defendant previously arrested for one or more felonies or class A misdemeanors that have not yet been "disposed of"? No = 0; Yes = 2		
4. Criminal History/Conviction – At the time of the arrest, does the defendant have at least one prior adult felony or class A misdemeanor conviction? No = 0; Yes = 2		
5. Two or More Failures to Appear – At the time of the arrest, has the defendant had a warrant or arrest for at least two failures to appear, bail jumping, or contempt of court that was a result of failing to appear? No = 0; Yes = 1		
6. Two or More Violent Convictions – At the time of the arrest, has the defendant been convicted of two or more violent crimes as defined in RSA 651:5, XIII? No = 0; Yes = 1		
7. Unemployed at Time of Arrest – At the time of the arrest, was the defendant working less than 20 hours per week? No = 0; Yes = 1 (students, retirees, or disabled persons receive 0 points)		
Total Score (0 thru 12):		
Success Level (H, M, or L):		

Score Range	Success Level
0 – 4 points	"H" = Higher Success
5 – 8 points	"M" = Medium Success
9 – 12 points	"L" = Lower Success

Notes:

Interbranch Criminal and Juvenile Justice Commission
Data Collection Subcommittee Meeting
August 14, 2018

PRESENT: Sarah Blodgett, Judicial Council; Karen Gorham, Superior Court; Beth Sargent, NH Association of Chiefs of Police; Lyn Schollett, NHCADSV; Representative David Welch

I. CHAIRPERSON

The committee elected Sarah Blodgett as chairperson.

II. CURRENT PILOT PROJECT

Karen described the Grafton County pilot project. It is primarily in the Circuit Court. The pilot project is designed to create a standardized tool for bail decisions.

The courts do not currently have the capacity to collect the data that would be needed to assess the effectiveness of the pilot project. Specifically, the courts do not track when a defendant comes in and out of custody. They don't track when a defendant gets picked up or released. This would be important data to have to assess bail reform. The Judicial Branch has applied for a grant from the MacArthur Foundation. They would help the Judicial Branch figure out which data points would be needed to effectively evaluate pretrial release programs and help the courts implement collecting this data. The Judicial Branch cannot independently modify their case management system; that is up to the vendor. They are asking the MacArthur Foundation to make recommendations other than modifying the database.

The committee discussed what kind of data it would be helpful to collect. One of the challenges is that we don't have baseline data right now. Do we know what other states have collected to assess the efficacy of their pretrial release programs?

NEXT STEP: Sarah and Karen will be on a call with court administrators and PJI on Thursday this week and will ask them what other states have collected.

Karen cautioned that NH manages many things differently than other states, so we can look to other states as a guideline but we may need to modify what other states have used. For example, all of the risk assessment tools used by other states tabulate instances of failure to appear. In NH, failure to appear is not tracked in a criminal record. Also, NH does not have a unified jail system.

NEXT STEP: Sarah will ask Joanna Hellman at the AG's Office to provide this committee with the data previously collected from jails to assess what we have been able to collect to date.

The committee discussed the importance of tracking recidivism and concurred that community safety is important. Under the new bail reform statute, the bail commissioner or court must record the reason for

holding someone on cash bail and the supporting facts. The law becomes effective 8/31/18. Typically the court enters the bail form but not the terms and conditions.

The only two reasons that someone would be held on cash bail moving forward are risk of failure to appear by a preponderance of evidence or the dangerousness finding by clear and convincing evidence. If one of these findings is made, a defendant could be held on cash bail or have restrictive conditions placed on bail. The courts can add codes to their database so they might be able to track the reason for imposing bail or a condition.

NEXT STEP: Karen will explore the possibility of adding codes to designate both dangerousness and risk of flight in the court database.

III. BAIL COMMISSIONERS

The committee discussed how courts and bail commissioners make determinations regarding the two factors above. For courts, the answer is clearer: a hearing would be held on the record.

NEXT STEP: Representative Welch will talk to a colleague who is a bail commissioner and ask how bail commissioners make determinations regarding risk of flight and dangerousness and report back to this committee.

Bail commissioners have a handbook and are required to participate in annual training but there is no standardization in terms of how much bail is for specific crimes. Some states have bail schedules that assign a particular amount of bail by crime.

Police will not release a defendant without consulting a bail commissioner. Police tell a defendant when the defendant is arrested that s/he will be seeing a bail commissioner. The defendant can waive seeing a bail commissioner. Bail commissioners are appointed by the court for 5-year terms. NH has approximately 140 bail commissioners. All are now cross-designated to work in superior and district courts.

Could we pinpoint what information is universally available to bail commissioners when they make decisions? Because every community operates differently, we can't assess this. Generally, the arrest information is available to the bail commissioner. Some police departments will run the criminal history record and make it available to bail commissioners. The bail commissioner talks to the defendant and under the new statute will have to consider whether the defendant is the sole provider for dependents, whether remaining incarcerated will result in dependents going to DCYF care and other factors.

Bail commissioners are authorized to set bail and conditions. Bail commissioners are trained on criminal bail protective orders and looking at the facts of the case to set bail and conditions. They use a standard bail order and can write in other conditions.

Under the new law, the bail commissioner cannot set cash or corporate surety bail if the only reason the defendant stays detained is failure to pay. A corporate surety bail is when the defendant gets a bail agent and pays them 10% of the bail as a fee for the surety. A defendant can however be detained based on dangerousness.

IV. BASE LINE DATA

The committee began a wish list of data to collect, acknowledging that some of this data would need to be collected from the courts and some would need to come from law enforcement.

- Who is arrested and charge
- Who is released and at what point – by bail commissioner or court
- If a defendant is not released, why
- Conditions when a defendant is released
- Who gets released at their incarceration arraignment
- For defendants who are released, are they arrested for another offense while on bail?
- A comparison of the arrest charge(s) and the charge(s) filed by prosecutor
- Failure to appear - the challenge is that this is not always recorded in the criminal record

The committee agreed that assessing recidivism is very important, and recognized that doing so would require a much longer time period of data collection about offenders than is proposed above.

V. NEXT MEETING

The ICJJC Data Subcommittee will next meet on Sept 12th at 10 a.m., likely in LOB 204.

The committee agreed to invite the following individuals to our next meeting:

- A bail commissioner, perhaps Representative Sytek (Rep. Welch to invite)
- Chief Shagouri or designee (Beth to invite)

Agenda topics will include but not be limited to:

1. Possibility of adding codes to the court database (Karen)
2. Overview of what other states are collecting in terms of data (Karen and Sarah)
3. How bail commissioners make decisions re: bail and conditions (bail commissioner)
4. Overview of data available today from police departments and how hard it would be to collect it (police chief)
5. Further discussion on “wish list” of data to collect in preparation for 9/17 ICJJC meeting (all)

Minutes Recorded by:
Lyn M. Schollett

INTERBRANCH CRIMINAL JUSTICE AND JUVENILE JUSTICE COMMISSION

Legislative Committee

Meeting Minutes

August 24, 2018

PRESENT: Sarah Blodgett, Judicial Council; Devon Chaffee, ACLU; James Ciani, NH General Court; Pat Conway, Rockingham County Attorney; Lyn Schollett, NHCADSV; James VARA, NH DOJ; Representative Welch

I. NEW BAIL STATUTE

Pat addressed some of the concerns of the County Attorneys in the new law. The last sentence of Para 3(a) is of concern. In her office they don't ask that someone be held on cash bail just because of substance misuse. However, drug use often impacts dangerousness. She shared a case example when the defendant was a danger to himself and the defendant's family asked that he be held on bail. A second concern is that when a defendant is out on bail with a condition that they not use illegal drugs but they do use repeatedly. If the state tries to revoke bail because of repeated positive tests, but bail can't be based on substance use alone, then this condition doesn't have teeth. Pat raised concerns that when someone is addicted, they may become desperate and engage in other dangerous conduct. Committee members had differing opinions as to how a court would interpret this sentence.

Devon explained that as written, the goal of the statute is to ask courts to assess two things: dangerousness and risk of flight.

Section IV(a) broadens the range of offenses for which a defendant can be detained, provided the criteria of dangerousness or risk of flight are met.

Pat raised concerns re: Sec. III(b) regarding whether someone is the sole caretaker for a child or the sole income producer for dependents impacts risk of flight. Sarah's understanding is that these criteria will only be considered in setting the amount of bail, not assessing risk of flight or dangerousness. Pat raised questions about how these criteria would be proved. Will judges require documentation of any of the criteria in this statute? Pat is concerned that the state will be hard pressed to meet an evidentiary burden in the short few hours they often have prior to a hearing. Felonies First has expedited this the time frame for arraignments.

NEXT STEPS: Sarah will ask Karen Gorham to share the forms she is developing to help the court document the criteria in this statute.

The County Attorneys may support legislation to remove the language regarding substance abuse and sole caretaker of children. They would like to remove this language this legislative session. They also

INTERBRANCH CRIMINAL JUSTICE AND JUVENILE JUSTICE COMMISSION

Legislative Committee

Meeting Minutes

September 10, 2018

PRESENT: Devon Chaffee, ACLU; James Cianci, NH General Court; Pat Conway, Rockingham County Attorney; Lyn Schollett, NHCADSV; James VARA, NH DOJ; Representative Welch

I. SB 232

This bill allowed police officers to issue a summons instead of calling a bail commissioner for a misdemeanor or violation, provided that there is a condition of good behavior attached to the summons. The bill passed the Senate but was laid on the table in the House. Committee members' recollection was that the opposition was logistical rather than philosophical. Specifically, there is no way for police or prosecutors to know if someone is out on a summons.

NEXT STEPS: Judge Nadeau will follow up with Howie Zibel and Judge Kelly to ascertain whether there is interest in moving this bill forward in the future.

II. Pre-Trial Detention Commission

The Commission will meet Monday, September 17 at 10 a.m. in LOB 303. The Commission has a significant amount of overlap in membership with the ICJJC, which will meet the same day at 1:30 p.m. Prosecutors and victim advocates are not on the Commission although they are represented on the ICJJC. James Cianci raised the question of coordinating the work of the two groups and the committee agreed this would be valuable.

III. Legislation/Leg Work

Judge Nadeau recommends that we look at how other states manage the bail commission process.

NEXT STEP: Judge Nadeau will try to find an intern who could manage the ICJJC work on bail.

IV. Guidance to Courts

Judge Nadeau said that the guidance to the courts will be to not post bail at a level that someone can't afford if the judge believes the defendant can safely be out.

As to the process of making findings, Pat raised concerns that providing proof on a short notice will be difficult. Judge Nadeau acknowledged that and said that some judges will likely schedule a second hearing. The committee discussed that a second hearing is a bit contrary to the Felonies First goal of streamlining. Pat shared an example of a recent case in which she was able to meet the burden by clear

Written Testimony

Bail Statute – RSA 597

-Natch Greyes, Esq.: Prosecutor for Littleton, Sugar Hill, and Franconia

While the new bail statute is admirable in its recognition that wealthy defendants should not be able to buy their way out of jail, the transition to a *clear and convincing evidence* burden for ‘dangerousness’ has had a negative effect on the safety of certain victims, particularly victims of domestic violence; undermined efforts to implement trauma informed investigative techniques; and burdened local towns with unbudgeted costs.

Under the newly enacted bail statute, New Hampshire has created a bail structure which no longer allows wealthy defendants who pose an ongoing danger to a particular person or the community-at-large to buy their way out of jail prior to trial. Under the new bail statute, dangerous defendants are treated the same no matter their wealth. If the State can meet its burden, a dangerous defendant will be held in jail until trial. In that way, the new statute has improved victim safety, but, in many other ways, the new statute has also undermined victim safety and law enforcement response.

Under the newly enacted bail statute, the State now has a high burden to overcome in order to satisfactorily prove that a particular defendant presents an ongoing danger to a particular person or the community-at-large. Now, the State must prove ‘dangerousness’ by *clear and convincing evidence*. That means that the State must present witnesses during the bail hearing.¹ In a case where ‘dangerousness’ is based on the facts of the case – such as a brutal assault – the witnesses must have actually witnessed the assault. In many domestic and sexual assault cases, the only witness is the victim.

Bail hearings are typically held before a judge the day after an arrest is made. Under New Hampshire law, police officers can – and often do – arrest perpetrators of domestic violence mere hours after being calling to the scene of the crime. That means that the bail hearing is held approximately 6 – 18 hours after the crime.

Under the prior law, the prosecutor could argue that the defendant was dangerous based on the information in the affidavit filed by the police, information uncovered during the investigation, and information on the defendant’s criminal record. No witnesses were needed and, if the assault was serious, the courts could – and routinely did – hold the defendant on high cash bails, the equivalent of the new bail statute’s “preventative detention.” Both the courts and prosecutors knew that the guy on social security disability who brutally beat his girlfriend and promised to kill her if he got out of jail couldn’t come up with the \$25,000 or \$50,000 bail and would be effectively detained until trial.

Under the new law, prosecutors need witnesses, especially witnesses to the event. I witnessed that on Tuesday, when the State Police were attempting to get the judge in my court – 2nd Circuit – Littleton District – to hold a defendant in a domestic violence case. When the

¹ See accompanying “Burdens of Proof Outline.”

defense lawyer objected, saying the State Police needed to get the victim to the courthouse to testify under the new law, the judge agreed.

If the victim had been in the hospital getting emergency surgery, or the victim had been in an area without cellular coverage, or, even, worked at a place where employees were not allowed to answer their phones, the defendant would have been released even though he was dangerous. As it happened, State Police got lucky on Tuesday. The victim was available. That won't be the case every time. I'd hate to be the prosecutor who has to call the victim after she gets out of surgery to tell her that the guy who put her in the hospital is free because she couldn't testify so the State couldn't meet its burden of *clear and convincing evidence*.

What's equally troubling is that this shift in the law undermines the efforts of the Governor's Commission on Domestic and Sexual Violence and the New Hampshire Attorney General's Office to identify and implement best-practices when it comes to domestic and sexual violence cases. The Model Protocol for Response to Adult Sexual Cases published last year informs first responders that they should conduct a "minimal facts" interview with victims of sexual assault and some forms of domestic violence. A forthcoming Protocol on domestic violence cases is expected to expand that "minimal facts" guidance to include all forms of domestic violence.

These Protocols are based on the most current scientific evidence related to how the brain processes trauma. Comprehensive statements encompassing the whole of the traumatic event are not as complete when the individual experiencing the trauma has not had at least one sleep cycle to process the event. If that individual is required to testify about the event only a couple hours after an attack, or immediately after being taken out of the hospital, the statements will not be as complete and the individual is subject to further traumatization, undermining the goal of the criminal justice system to get to the truth.

Less importantly, but still a matter for consideration, is the fact that it is not just victims who are being required to testify. Police officers are as well. This is a change and one that is having an impact on police budgets and scheduling. Officers must be called in at overtime rates to testify or cover shifts for officers who need to get to sleep after 20+ hour days due to the need to testify. In the first month, this change cost one of my agencies, the Littleton Police Department, approximately, \$349.46. It would have been more than double that amount, but, fortunately, other hearings ended up canceled before the call out went into effect. These are unbudgeted expenses which towns would not have incurred under the prior law.

The new bail statute does protect some new victims, but its requirement that the State meet a clear and convincing evidence burden of proof before jailing dangerous defendants requires that the State now introduce witnesses at bail hearings. That can result in dangerous defendants who were formally jailed being released and is not in line with best practices and the scientific evidence surrounding trauma. It also has a negative effect on town budgets. In light of these effects, it makes sense to reevaluate the structure of the bail statute and harmonize it with the traditional public safety goals of bail and current best practices.

Burdens of Proof Outline

Reasonable Suspicion –

Reasonable suspicion is more than a “hunch.” It constitutes “specific and articulable facts . . . taken together with rational inferences from those facts” about a specific individual. Terry v. Ohio, 392 U.S. 1 (1968).

This is the level of proof an officer needs to pursue further investigation into the possibility of criminal activity by a particular individual. E.g. the officer smells alcohol on a driver’s breath.

Probable Cause –

Probable cause exists “where the facts and circumstances within the officer’s knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed.” Brinegar v. United States, 338 U.S. 160 (1949).

This is the level of proof an officer needs to obtain a warrant to search a premises or arrest an individual for the commission of a crime. It is a low level of proof, commonly recognized as less than the civil standard of “preponderance of the evidence.”

Preponderance of the Evidence –

Preponderance of the evidence is the “more likely than not” standard. It is the only burden with a universally recognized mathematical equivalent – 50.1%.

This is the level of proof needed in most civil cases.

Clear and Convincing Evidence –

Clear and Convincing Evidence requires the party charged with meeting the burden “place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are ‘highly probable.’” Colorado v. New Mexico, 467 U.S. 310 (1984). This is a higher burden than “preponderance of the evidence.” Id.

Proof Beyond a Reasonable Doubt –

Proof beyond a reasonable doubt is the criminal conviction standard. It requires the State to prove “every fact necessary to constitute the crime with which [the defendant] is charged” to the exclusion of all reasonable doubt. In re Winship, 397 U.S. 358 (1970). It does not mean absolute certainty, just proof the degree that no reasonable person would disagree with the conclusion.



Home / Law Scribbler / Text-message reminders are a cheap and effective...

LAW SCRIBBLER

Text-message reminders are a cheap and effective way to reduce pretrial detention

BY JASON TASHEA ([HTTP://WWW.ABAJOURNAL.COM/AUTHORS/64729/](http://www.abajournal.com/authors/64729/))

POSTED JULY 17, 2018, 7:10 AM CDT

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Jason Tashea. Photo by Saverio Truglia.

Justice Institute reports each year about 12 million Americans are booked into local jails pretrial for offenses, bench warrants and technical violations of their release; the latter two can include FTAs. Being jailed for an FTA can create serious collateral

With just a couple of dollars, courts and public defenders can keep people from being arrested.

Court date reminders sent to defendants via text message are an inexpensive, simple intervention being tested across the country.

Not only is the solution working, it's avoiding the expensive, labor-intensive and destructive practice of issuing bench warrants that can land people in jail.

While national "failure to appear" statistics are not kept, the Pretrial

consequences for the defendant, which could impact their employment, housing and even guardianship of their children. Defendants can also have their bail revoked or forfeited as a result of failing to appear for court dates.

Jailing people pretrial is also expensive. PJI says pretrial detention in total costs taxpayers about \$14 billion a year (<http://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>).

By contrast, software made by the company Uptrust (<http://www.uptrust.co/>), which helps public defenders send text-message reminders for their clients, costs about \$20,000 to install and only \$2 per defendant per year after that, explains Jacob Sills, the company's CEO.

Uptrust's software is currently operating in five counties or cities in California, Maryland, Pennsylvania and Virginia, with expansions planned in counties in Florida and Washington.

"There is this perception that flight risk is a real thing that people need to worry about," Sills says. However, he says that the vast majority of criminal defendants are not flight risks—they're attendance risks.

Contra Costa County, California, adjacent to Berkeley and Oakland, is using Uptrust to send four reminders per defendant before a court hearing, explains Blanca Hernandez, deputy public defender at the Contra Costa County Office of the Public Defender (<http://co.contra-costa.ca.us/1555/Public-Defender>).

The reminders are used officewide and have been integrated into the Early Representation Program, which is tasked with lowering the county's FTA rate for misdemeanor cases, which was as high as 57 percent

(<http://www.contracosta.ca.gov/DocumentCenter/View/42813/CABJuneHandouts?bidId>).

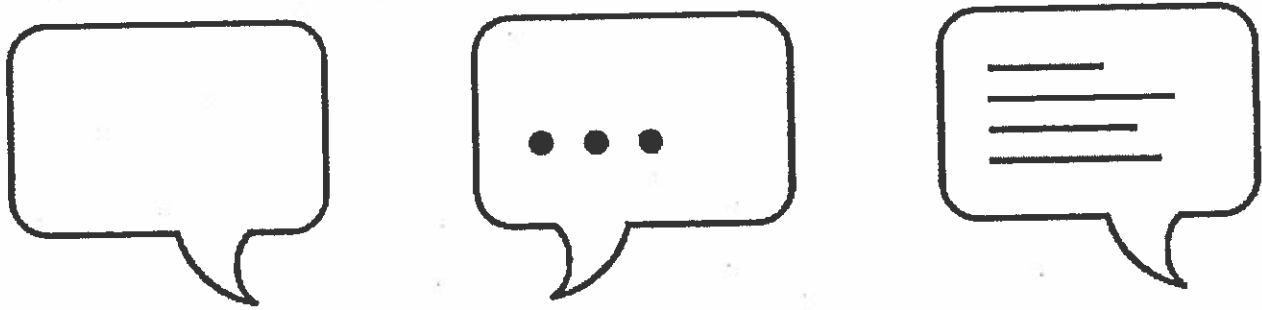
Confirming Sills' theory about attendance risk, Hernandez says that "approximately one third of individuals who appeared at their first court date self-reported that they knew about the court date only because they were contacted in advance through the program." She adds that the program is a time-saver for her attorneys, who no longer have to spend time calling clients the night before a hearing.

Her office and the county collect limited FTA data, so measuring impact is imprecise. Between 2015 and 2016, however, Hernandez says the misdemeanor FTA rate ranged between 52 and 57 percent in the county, and for felonies it was between 20 and 30 percent. While Uptrust only collects data on recipients of its reminders—making the data both incomplete and potentially biased—Sills says that three Contra Costa offices that use Uptrust see an average FTA rate for misdemeanors and felonies combined of only 2.5 percent. In the next year, the company expects to undertake more research to better assess their impact.

While the anecdotal experience in California is promising, New York City recently completed a rigorous study

(http://urbanlabs.uchicago.edu/attachments/store/9c86b123e3b00a5da58318f438a6e787dd01d66d0efad54d66aa232a6473/142-954_NYCSummonsPaper_Final_Mar2018.pdf) finding that text-message reminders led to a significant drop in FTAs.

“Before we started our work, the FTA rate was close to 40 percent,” says Aurelie Ouss, an assistant professor at the University of Pennsylvania and a co-author of the study.



cTermit / Shutterstock.com

This research tracked two approaches attempting to decrease FTAs. First, researchers redesigned the court summons to be easier to read. Randomly deployed in the city, those who received the redesigned summons had an FTA rate 13 percent lower than those who received the older version.

Second, the study deployed text-message reminders. The reminders were sent three times to a defendant during the week before a scheduled court date. The study also sent a message after the hearing date if the person failed to appear. The most effective text messages—those that “combined information on the consequences of not showing up to court, what to expect at court, and plan-making elements”—led to a 26 percent reduction in FTAs.

Receiving both the text messages and the redesigned summonses decreased the FTA rate by 36 percent. Based on 2014 numbers, deploying both interventions could have meant 20,000 to 31,000 fewer warrants issued in New York City.

“Our results are very encouraging—text messaging is very cheap (less than 1 cent per message),” says Ouss, “and so even modest improvements in court attendance could be highly cost-effective.”

While this study shows significant promise, there are variables to consider when building a project like this, Sills says.

Specifically, he says that some administering agencies, like police and court clerks, struggle to collect phone numbers and consent from potential participants because of a lack of trust.

For this reason, his company intentionally works with public defender offices because of their relationships with defendants themselves. Illustrating this point, the New York City study was done in partnership with the New York City Police Department and the New York State Unified Court System Office of Court Administration. It had cellphone numbers for 13 percent of potential recipients. By contrast, the Contra Costa Public Defenders Office had phone numbers for 90 percent of potential recipients, according to Hernandez.

Howard Henderson, professor and director of the Center for Justice Research at Texas Southern University in Houston, likes text-message reminders because it meets people where they are at—their cellphone. He believes that this mentality can be used to expand access to courts for all people.

For example, text-message reminders do little good for those with inflexible employment or childcare obligations. Henderson says that offering court dates after 5 p.m. and on Saturdays and providing online dispute resolution would continue to evolve the justice system to meet people where they are at and when their schedules allow.

Getting judges to work weekends may be a tough ask, but text-message reminders are cost-effective and show a potential to keep tens of thousands of Americans out of jail.

With so much promise, let's hope the justice system gets the message.

Corrects the number of text messages sent and Blanca Hernandez's first name in the ninth paragraph.



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**SENATE CALENDAR
NOTICE
FOR MEETINGS
STATUTORY COMMISSION**

Date: September 19, 2018

REGULAR MEETING

Monday

10/22/2018

(Day)

(Date)

**COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND
PRETRIAL SERVICES**

597:43 - Chapter 366:11 - Laws of 2018

(Name of Committee)

(Bill #, Chapter # and Year) or (RSA#)

12:00 p.m.

Legislative Office Building 301

(Time)

(Location)

Senator Dan Feltes
First Named Member

Jessica Bourque 271-3067

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Monday, October 22, 2018

Agenda

- 1. Welcome**
- 2. Introductions**
- 3. Inventory of Pre-Trial Services/SUD Services Plan**
- 4. Risk Assessment Discussion**
- 5. Text Messaging Pilot Results/Failure to Appear & Scheduling Issues**
- 6. Public Testimony/Input**
- 7. Additional business**
- 8. Adjourn**

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Meeting Minutes

October 22, 2018

Members Present: Sen. Dan Feltes, Rep. Renny Cushing, Rep. David Welch, Justice Tina Nadeau, Chief Andrew Shagoury, Lt. Mark Morrison, Lisa Rule for Atty. James Vara, Prof. Buzz Scherr, Hon. Edwin Kelly, Atty. Randy Hawkes.

The Commission debated and discussed the pre-set agenda. The Commission also heard from David Bennett, Pat Conway and Justin Hersh. All Commission members were invited to send proposals for recommendations to the Chair on or by COB Thursday.

Meeting Adjourned.

**SENATE CALENDAR
NOTICE
FOR MEETINGS
STATUTORY COMMISSION**

Date: September 19, 2018

REGULAR MEETING

Monday

10/29/2018

(Day)

(Date)

**COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND
PRETRIAL SERVICES**

597:43 - Chapter 366:11 - Laws of 2018

(Name of Committee)

(Bill #, Chapter # and Year) or (RSA#)

3:00 p.m.

Legislative Office Building 301

(Time)

(Location)

Senator Dan Feltes
First Named Member

Jessica Bourque 271-3067

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Monday, October 29, 2018

Agenda

- 1. Welcome**
- 2. Introductions**
- 3. Presentation by Commissioner Meyers**
- 4. Review Recommendations**
- 5. Public Testimony/Input**
- 6. Additional business**
- 7. Adjourn**

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Meeting Minutes

October 29, 2018

Members Present: Sen. Dan Feltes, Rep. Renny Cushing, Rep. David Welch, Justice Tina Nadeau, Chief Andrew Shagoury, Lt. Mark Morrison, Atty. James Vara, Prof. Buzz Scherr, Hon. Edwin Kelly, Atty, Randy Hawkes

The Commission heard a presentation from Commissioner Meyers and Katia Fox of HHS about the Hub & Spoke SUD delivery model. The MAT portion is not designed for pre-trial. Commissioner Meyers has offered to work with Superintendent of Jails on application/implementation.

The Commission took up proposals from the Chair, from the Courts and from Chief Shagoury. The Commission voted unanimously in support of the text messaging proposal from the Courts, the data collection proposal from the Chair, and two proposals from Chief Shagoury: 1.) The General Court paying bail commissioner fees if defendant is indigent; and 2.) The General Court reconstituting this Commission with the formal addition of an appointee for the Association of NH County Attorneys. A proposal by Chief Shagoury to require pre-trial detention in cases of three or more failure to appears in a defendants lifetime, rebutted by a preponderance of the evidence for good cause, was voted down. That proposal failed on a 3-6 vote, with Shaugoury, Vara and Morrison in support and Justice Nadeau having needed to leave.

The Commission will take up proposals from Lt. Morrison and Randy Hawkes at the meeting on November 14.

Meeting Adjourned.

**SENATE CALENDAR
NOTICE
FOR MEETINGS
STATUTORY COMMISSION**

Date: November 1, 2018

REGULAR MEETING

Tuesday

11/13/2018

(Day)

(Date)

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND
PRETRIAL SERVICES
597:43 - Chapter 366:11 - Laws of 2018

(Name of Committee)

(Bill #, Chapter # and Year) or (RSA#)

1:00 p.m.

Legislative Office Building 307

(Time)

(Location)

Senator Dan Feltes
First Named Member

Jessica Bourque 271-3067

COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Tuesday, November 13, 2018

Agenda

- 1. Welcome**
- 2. Introductions**
- 3. Review Draft Report**
- 4. Public Testimony/Input**
- 5. Additional business**
- 6. Adjourn**

Bourque, Jessica

From: Mark P. Morrison <mmorrison@londonderryhpd.org>
Sent: Thursday, October 25, 2018 4:56 PM
To: Feltes, Dan
Subject: Commission on Pretrial - legislative changes
Attachments: Commision on Pretrial and Bail Legislative changes.docx

Senator Feltes,

I hope this email finds you well. Please find the attached word document with my suggested legislative changes to RSA 597:2. Thank you for your consideration to this matter, and I look forward to our next meeting.

Mark Morrison

Thank You,

Lieutenant Mark Morrison
Londonderry Police Department
268A Mammoth Road
Londonderry, NH 03053
Phone: 603 432-1118 Cell: 603-548-0316
Email: mmorrison@londonderryhpd.org



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Town of Londonderry, NH

Lt. Mark Morrison
268-A Mammoth Road
Londonderry NH, 03053
603-432-1118 x4104

Senator Dan Feltes
Legislative Officer Building 101-A
33 N. State Street
Concord NH, 03301

Senator Feltes,

Please find the below suggestions for legislative changes to RSA 597:2. I will do my best to make the changes easy to follow by labeling the Roman Numeral Section, paragraph or subparagraph, typing all or part of the paragraph in question, and then indicating (add, strike, etc) in red font color immediately following.

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

ADD a new subparagraph (c) Detained pursuant to paragraph IV; *NOTE: This would move the existing subparagraph (c) to a new subparagraph (d).*

- III. (a) The Court shall order the pre-arraignment or pretrial release of the person on his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court...

STRIKE last sentence of Paragraph III. "Except that such dangerousness determination shall not be based solely on evidence of drug or alcohol addiction or homelessness."

STRIKE subparagraphs III(b), III(b1), III(b2), and III(b3)

- III. (c) For purposes of the court's determination under this paragraph, evidence of homelessness or a lack of a mailing address by itself shall not constitute prima facie evidence of a lack of reasonable assurance that a person will now appear.

STRIKE subparagraph (1) "Shall not impose a financial condition that will result in the pretrial detention of a person solely as a result of that financial condition."

- III. (e) If the court or justice determines by a preponderance of the evidence that the release described in this paragraph will not reasonably assure the appearance of the person, the court shall issue an order that includes the following conditions, ...

STRIKE "subject to the limitations in subparagraph (b)(1):"

IV (a) If a person is charged with any criminal offense, and offense listed in RSA 173-B:1, I or a violation of a protective order...

STRIKE "by clear and convincing evidence,"

ADD "by a preponderance of the evidence" to take the place of the aforementioned "by clear and convincing evidence," verbiage struck.

IV (a) If a person is charged with any criminal offense, and offense listed in RSA 173-B:1, I or a violation of a protective order...(skip to sentence being modified). The court may consider...

STRIKE "...the following conduct as evidence of posing a danger..."

ADD The court may consider "all relevant factors bearing on the issue of dangerousness,"

ADD new subparagraphs (8-16)

- (8) Criminal History
- (9) Motor Vehicle History
- (10) Probation/ Parole Status
- (11) History of violating Probation/ Parole
- (12) Active use of controlled substances
- (13) Evidence of distribution or heroin, fentanyl, carfentanyl, cocaine, crack cocaine, methamphetamine, or other opiod class substances.
- (14) Facts underlying the charged conduct
- (15) History of violating Bail Orders
- (15) History of violating court ordered no contact provisions

Thank you for your consideration to this matter. I have received a lot of feedback from many different sources and I have tried to summarize most of that feedback in these suggestions. I look forward to the discussions that will follow as we work towards a common goal, even if some commission members are driving on different roads to get there. Should you have any questions, feel free to reach out; I am happy to assist in any way I can.

Respectfully Submitted,

Mark Morrison

Proposed amendment to confirm that first appearance bail hearings occur via offer of proof, and that defendants are entitled to request a hearing, law enforcement witnesses can appear via video conferencing and victims are not required to testify at (although their statements to police may be introduced subject to the opportunity for law enforcement to request sealing of the statement to protect investigations).

NOTE: this proposed amendment addresses only one issue with NH RSA 597:2: clarifying the intent that the state can proceed by offer of proof at the first hearing

597:2 Release of a Defendant Pending Trial.

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

- (a) Released on his or her personal recognizance or upon execution of an unsecured 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) Temporarily detained to permit revocation of conditional release pursuant to the provisions of paragraph VIII.**

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

- (a) Released on his or her personal recognizance or upon execution of an unsecured 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. (a) The court shall order the pre-arraignment or pretrial release of the person on his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, or cash or corporate surety bail, subject to the condition that the person not commit a crime during the period of his or her release, and subject to such further condition or combination of conditions that the court may require unless the court determines by a preponderance of the evidence that such release will not reasonably assure the appearance of the person as required. A person who the court determines to be a danger to the safety of that person or the public shall be governed by the provisions of paragraph IV, except that such dangerousness determination shall not be based solely on evidence of drug or alcohol addiction or homelessness.

(b) In determining the amount of the unsecured appearance bond or cash or corporate surety bail under subparagraph II(a), if any, the court:

- (1) Shall not impose a financial condition that will result in the pretrial detention of a person solely as a result of that financial condition.**

(2) Shall consider whether the person is the parent and sole caretaker of a child and whether, as a result, such child would become the responsibility of the division of children, youth and families.

(3) Shall consider whether the person is the sole income producer for dependents.

(c) For purposes of the court's determination under this paragraph, evidence of homelessness or a lack of a mailing address by itself shall not constitute prima facie evidence of a lack of reasonable assurance that a person will not appear.

(d) If, as a result of the court's decision, a person is detained, the court shall issue on the record findings of fact that document the basis for its decision.

(e) If the court or justice determines by a preponderance of the evidence that the release described in this paragraph will not reasonably assure the appearance of the person, the court shall issue an order that includes the following conditions, subject to the limitation in subparagraph (b)(1):

(1) The condition that the person not commit a crime during the period of release; and

(2) Such further condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required, which may include the condition that the person:

(A) Execute an agreement to forfeit, upon failing to appear within 45 days of the date required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court or justice may specify;

(B) Furnish bail for his or her appearance by recognizance with sufficient sureties or by deposit of moneys equal to the amount of the bail required as the court may direct; and

(3) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the person or the public.

(f) In considering the conditions of release described in subparagraph (e)(2)(A) or (e)(2)(B), the court may, upon its own motion, or shall, upon the motion of the state, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

IV. (a) If a person is charged with any 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, 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. The court may consider the following conduct as evidence of posing a danger, including, but not limited to:

(1) Threats of suicide.

- (2) Acute depression.
- (3) History of violating protective orders.
- (4) Possessing or attempting to possess a deadly weapon in violation of an order.
- (5) Death threats or threats of possessiveness toward another.
- (6) Stalking, as defined in RSA 633:3-a.
- (7) Cruelty or violence directed toward pets.

(b) At the first appearance before the Court, evidence in support of preventive detention shall be made by offer of proof. At that time, the defendant may verbally request a subsequent bail hearing where live testimony is presented to the court. At any subsequent hearing such testimony may be presented via video conferencing, unless the Court determines that a witness's in-court presence is necessary. Any request by the defendant for in-court testimony shall be made by oral motion at the initial hearing or by written motion prior to the subsequent hearing. Any Order granting the defendant's request shall be distributed to the parties at least 48 hours prior to the subsequent hearing.

(c) at no time shall an alleged victim of a crime be required to testify at a bail hearing. Nothing in this section shall preclude an alleged victim from voluntarily testifying at such a hearing. The State may present evidence of statements made in the course of an investigation through a law enforcement officer.

V. A no-contact provision contained in any bail order shall not be construed to:

- (a) Prevent counsel for the defendant from having contact with counsel for any of the individuals protected by such provision; or
- (b) Prevent the parties, if the defendant and one of the protected individuals are parties in a domestic violence or marital matter, from attending court hearings scheduled in such matters or exchanging copies of legal pleadings filed in court in such matters.

VI. If a person is charged with violation of a protective order issued under RSA 173-B or RSA 633:3-a, the person shall be detained without bail pending arraignment pursuant to RSA 173-B:9, I(a).

VII. In a release order issued pursuant to this section, the court shall include a written statement that sets forth:

- (a) All of the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and
- (b) The provisions of RSA 641:5, relative to tampering with witnesses and informants.

VIII. A person charged with an offense who is, or was at the time the offense was committed, on release pending trial for a felony or misdemeanor under federal or state law, release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under federal or state law; or probation or parole for any offense under federal or state law, except as provided in RSA 597:1-d, III, may be detained for a period of not more than 72 hours from the time of his

or her arrest, excluding Saturdays, Sundays and holidays. The law enforcement agency making the arrest shall notify the appropriate court, probation or parole official, or federal, state, or local law enforcement official. Upon such notice, the court shall direct the clerk to notify by telephone the department of corrections, division of field services, of the pending bail hearing. If the department fails or declines to take the person into custody during that period, the person shall be treated in accordance with the provisions of law governing release pending trial. Probationers and parolees who are arrested and fail to advise their supervisory probation officer or parole officer in accordance with the conditions of probations and parole may be subject to arrest and detention as probation and parole violators.

IX. Upon the appearance of a person charged with a class B misdemeanor, the court shall issue an order that, pending arraignment, the person be released on his or her personal recognizance, unless the court determines pursuant to paragraph IV that such release will endanger the safety of the person or the public. The court shall appoint an attorney to represent any indigent person charged with a class B misdemeanor denied release for the purpose of representing such person at any detention hearing.

X. A person detained by a circuit court has the right to:

(a) In the first instance, a hearing in circuit court within 36 hours after the filing of the motion, excluding weekends and holidays on a motion to reconsider the original detention order; and

(b) A decision upon a de novo appeal, pursuant to RSA 597:6-e, II, to the superior court within 36 hours of the filing of the appeal, excluding weekends and holidays.

Source. 1903, 28:1. 1919, 49:1. PL 366:14. RL 425:14. RSA 597:2. 1969, 78:2. 1989, 386:3. 1992, 269:3, 4. 1993, 258:3, eff. Aug. 14, 1993. 1999, 229:1, eff. Jan. 1, 2000. 2005, 230:1, eff. Jan. 1, 2006. 2006, 214:3, eff. July 31, 2006. 2009, 91:1, eff. Aug. 11, 2009. 2011, 236:2, eff. Sept. 3, 2011. 2015, 74:1-3, eff. Jan. 1, 2016. 2018, 366:2, eff. Aug. 31, 2018.



Phone: 806-553-2864
Email: a2i@a2ionline.com

Accountable Pre-trial/Post- conviction Services

The New Hampshire Criminal Justice System is working to construct a plan for dealing with issues facing the court in a more efficient and effective way while balancing the rights of the accused and public safety. Across the country, communities are searching for solutions to overcrowding in jails, never ending dockets, high bonds, and indigent defendants. There is a solution being used nationwide that is assisting the courts with solving these issues. A solution that can allow a defendant in the New Hampshire Criminal Justice System to be "stair-stepped" through an accountable supervision program. This program can monitor these defendants from the least restrictive means of release through arrest in the event of a violation of the orders of the court.

Text messaging as a form of court date notification

The typical Text Message Program that notifies defendants of court dates is not one that allows for an accountable, trackable program. With these unaccountable programs, you can only:

1. Add phone numbers to a database
2. Send out mass text messages
3. And, in some instances, receive a response (if the defendant replies)

However, the text messaging platforms that are typically used *provide no end use reporting*. You will never know if the defendant has:

1. Received the message
2. Read the message
3. It does not allow for any physical interaction with the defendant at all

You simply know that a message was sent, nothing else.

Accountable Auto-dialer Interface (ADI) System

However, through our autodial interface system (ADI) the compiled information (phone numbers) can be entered into a fully interactive program that allows for detailed end user reports, indicating the following:

1. Answered calls
2. Acknowledgement of phone calls
3. Bad Phone numbers

The ADI system can be set up to call at intervals that suit each court. Our standard recommendation is for each defendant and their contacts to receive two calls (one 7 days before and one 24 hours before the next schedule court date). Furthermore, through programs that have already been tested and proven successful, the court has an accountable solution to the problems with pre-trial and post-conviction issues at no cost to the court. These solutions include:

1. Automated Court date notifications
2. Multi-level GPS monitoring
3. Real time Alcohol monitoring
4. Drug testing
5. Around-the-clock case management with full arrest powers*

*With the help of local, licensed and regulated bail agents these solutions can include every level of restriction and supervision needed by the court including arrest.

Below is a list of supervision services that are available through our A2i Pre-Trial/ Post Conviction Release Supervision Program, some of which are already being utilized in New Hampshire:

AutoDial Interface Court Notification System (ADI)

Notifies each defendant of upcoming court dates, allows for physical exchange of information, and offers end user reporting. Our minimal standard recommendation is two notification calls for all persons enrolled, one at 7 days and one at 24 hours prior to their scheduled court appearance.

- The ADI system calls all numbers entered as a contact for defendant (including family members and/or representatives)
- Through organized easy to read reports the courts are informed on the following:
 - o Incorrect information (wrong numbers, disconnected number, etc.)
 - o Verification of received message
 - o Also allows defendants the ability to connect with a case manager

Defendant's Name			
Outgoing	<input type="checkbox"/> Checked In	11/08/2018	<input type="checkbox"/> Transferred
			Called defendant B with info: Court: criminal district court Charge: 14/38 Court Date/Time: 11/15/2018 3:00PM Failed: Busy
	<input type="checkbox"/> Checked In	11/08/2018 1	<input type="checkbox"/> Transferred
			Called indennitor with info: Court: criminal district court Charge: 14/38 Court Date/Time: 11/15/2018 3:00PM Answered

Defendant's Name			
Outgoing	<input type="checkbox"/> Checked In	11/08/2018	<input type="checkbox"/> Transferred
			Called indennitor at with info: Court: criminal district court Charge: 14/37.4 Court Date/Time: 11/09/2018 9:00AM Answered
	<input type="checkbox"/> Checked In	11/08/2018 1	<input type="checkbox"/> Transferred
			Called defendant at with info: Court: criminal district court Charge: 14/37.4 Court Date/Time: 11/09/2018 9:00AM Answered

Typical ADI return report

- Receiving alerts of violations via email/SMS notification

Email Notification



Wed 11/7, 9:18 AM

Reply all

has not yet received a check-in from subject for the requested check-in at 8:18 am on 11/07/18. If this check-in request occurred while the subject was in an area with poor cellular service, then it is possible that the check-in is locally stored on the subject's phone, and will be received by at a later time. Follow the link to view this subject's page:

Email/ Text message received by Case Manager in a failed/missed check-in

- Violations are reported to the court immediately via fax/email



court reports
Sun 11/4, 7:01 PM

Reply all

Alarms and Reports



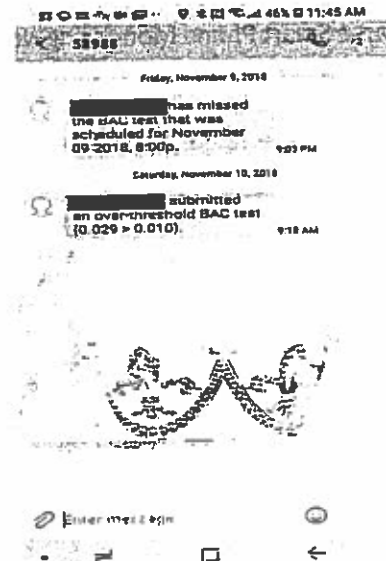
11.4.2018...
44 KB

Download Save to OneDrive - a2inola.com

Attached is the court report on | Included weekend check in compliance for BAC, and the fact that she was across the street from her home and not at home this morning. Please let me know if you need any further information.

Emailed court report can be sent to Agent, DA office, and/or Judge

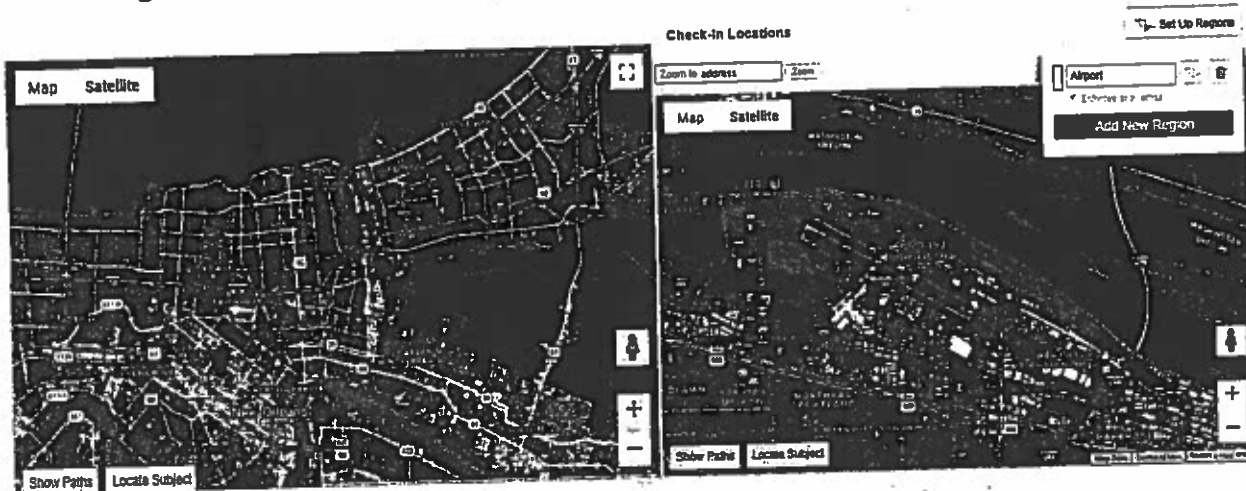
- Recommended for first offense, low-level defendants that need a little more supervision or have missed a scheduled court appearance



- Personalized or Random testing available

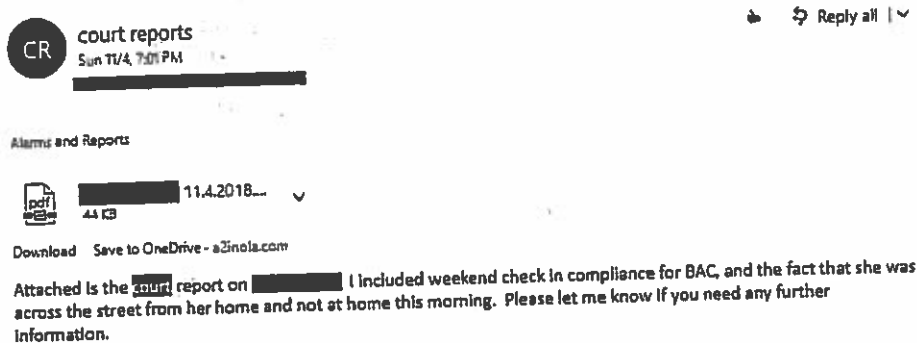
Easy scheduling of check-in/testing times

- Utilizing GPS to monitor the defendant location and tracking violations of curfew and stay away zones



Using GPS for offender location and exclusion (stay away) zones

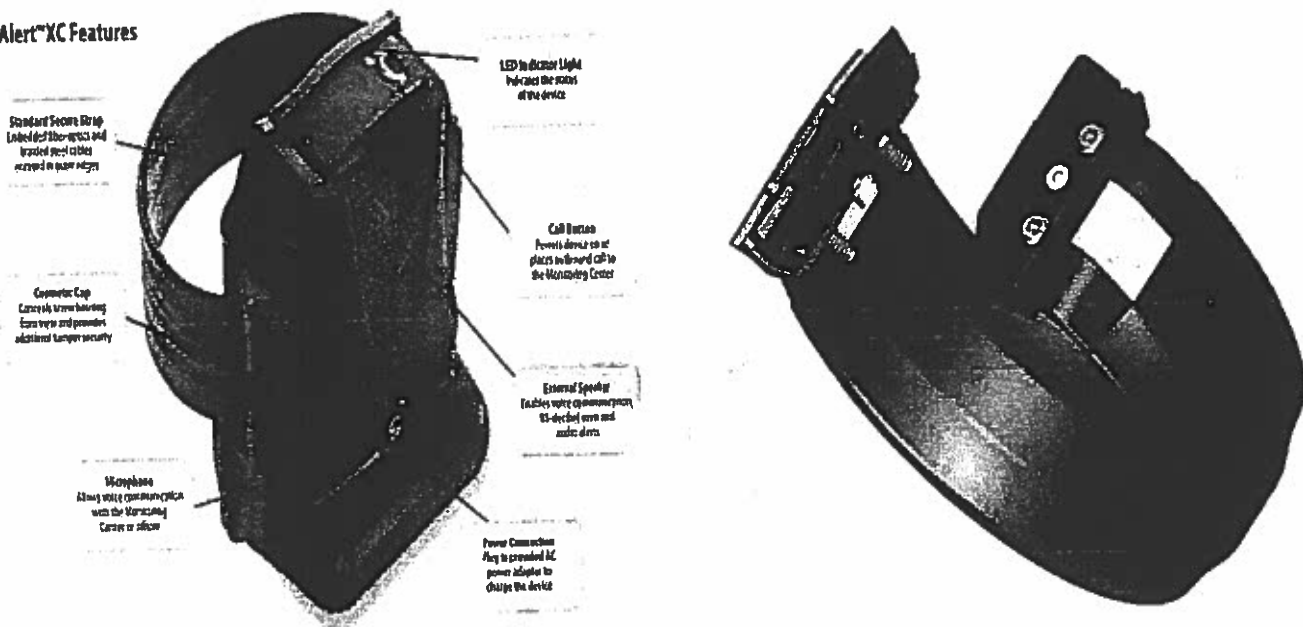
- Offering immediate court reporting for all violations, including arrest powers if necessary



Immediate court reporting can be sent to Agent, DA, and/or Judge

High-Level security (Double-banded Metal Strapped with Fiberoptics) GPS Monitoring

ReliAlert™ XC Features



High Level Monitoring with XC3 and Secure Cuff

- Allows for 24/7 location monitoring just like the low-level monitor of defendants, with or without home incarceration or curfews and stay away zones
- Provides real-time violation intervention with our Monitoring/Enforcement Department
- Our 24-hour Monitoring Department can also contact the offender via phone/text messaging/email
- Our Enforcement Department can enforce all orders of the court with arrest powers* if necessary
- Utilizes *light detection case tampering* technology
- Utilizes a variety of alert mechanisms:
 - Two/three-way voice communication with offender
 - Onboard 95-db siren that can be activated as part of a violation protocol. The siren alerts victims and the public to an offender violation/location and helps safely assist officers with offender recovery and improves public safety
 - 95-db Audio alerts
 - LED lights
 - Vibrations
- Our SECURECUFF™ is a patent-pending, hardened steel encased security cuff
 - Designed with dual steel bands that are highly cut resistant
 - Embedded with fiber optics to detect tampering
 - Security screws and tamper-proof cover attach the strap to the device
- Can be used with our Empower technology victim application (see below) for domestic cases
- This service also alerts the court of any violations via email/fax
- Recommended for high-risk offenders, defendants with extensive FTA or criminal histories, etc.



Phone: 806-553-2864
Email: a2i@a2ionline.com

an Alternative to Incarceration

Providing Accountable Solutions Nationwide

A2i Pre-Trial/Post-Conviction Supervision Program

Enrollment includes

As low as \$1 per day*

- ADI Court Date Notification Program
 - o Court Appearances
 - o Probation Hearing
 - o Parole Hearing
- Indigent Cases are handled on a case-by-case bases
- Case Management
 - o Compliance information
 - o Physical Communication with enrolled defendants
- Personalized Reports
 - o Daily, weekly, monthly reporting available
 - o Personalized scheduling to meet the demands of the court

Smartphone Monitoring and Supervision

As low as \$3 per day*

- o Includes ADI Court Date Notification Program
- o Personalized check in scheduling at court's discretion
- o Specific times
- o Random times
- o Facial and voice recognition compliance software
- o Notification of violations upon check-in
- o Inclusion Zones
 - Curfew
 - Home Incarceration
- o Exclusion Zones (Specific Addresses)
 - Stay Away Location
 - Protective Order Locations
- o Personalized Court Reports
 - o Sent via email/fax (at court's discretion)
 - o Immediate Reports for violations
 - o Monthly Reports for all offenders
 - o Court Reports for docket matters

- Panic Button
 - connects directly with a configured number (ex: law enforcement, discretion of the court protocol)
- Dispatch
 - initiates outbound call to second configured phone number (Ex. Case Manager/Monitoring Dept)
- Instant Message Dispatch
 - allows victim to communicate via text with the monitoring department
- Mobile Zone
 - moves with the victim
 - Allow continuous monitoring for safety of the defendant

Drug Testing

As low as \$11 per test*

- Certified Drug Testing Proctors
 - 12 panel Urine Test
 - 10 panel Saliva Test

***Priced based on Defendant Pay, Includes 24/7 Monitoring of all Services**

The use of a Surety Bond gives physical interaction with defendants, including the ability to recommit defendant for violation of any and all court orders (at court's discretion).

Bourque, Jessica

From: Bourque, Jessica
Sent: Thursday, August 30, 2018 10:38 AM
To: Hopper, Gary; 'Repdawelch@hotmail.com'; 'Cushing, Renny'; Cushing, Renny; 'james.vara@doj.nh.gov'; 'tnadeau@courts.state.nh.us'; 'EKelly@courts.state.nh.us'; 'albert.scherr@law.unh.edu'; 'rhawkes@nhpd.org'; 'tboropd@worldpath.net'; 'mmorrison@londonderrynhpd.org'
Cc: Feltes, Dan
Subject: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES Meeting Notice
Attachments: SB 556 September Notice.rtf

Good Morning,

As the first named Senator on the Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services (SB 556), Senator Feltes is calling the first meeting on **Monday, September 17th at 10:00 in Room 303 of the Legislative Office Building**. Please let me know if you are unable to attend or if you have any other questions. Have a great day!

Jessica A. Bourque
NH State Senate
Administrative Assistant to:
Senator Kevin Cavanaugh, District 16
Senator Dan Feltes, District 15
Senator Martha Hennessey, District 5
Legislative Office Building
Room 5
Concord, NH 03301
(603) 271-3067

Bourque, Jessica

From: Bourque, Jessica
Sent: Friday, September 14, 2018 10:59 AM
To: Hopper, Gary; 'Repdawelch@hotmail.com'; 'Cushing, Renny'; Cushing, Renny; 'james.vara@doj.nh.gov'; 'tnadeau@courts.state.nh.us'; 'EKelly@courts.state.nh.us'; 'albert.scherr@law.unh.edu'; 'rhawkes@nhpd.org'; 'tboropd@worldpath.net'; 'mmorrison@londonderrynhpd.org'
Subject: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Good Morning Commission Members,

This is just a reminder that the Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services will hold its Organizational Meeting this Monday, September 17th at 10:00 am in Room 303 of the Legislative Office Building.

Enjoy your weekend!

Jessica A. Bourque
NH State Senate
Administrative Assistant to:
Senator Kevin Cavanaugh, District 16
Senator Dan Feltes, District 15
Senator Martha Hennessey, District 5
Legislative Office Building
Room 5
Concord, NH 03301
(603) 271-3067

Bourque, Jessica

From: Bourque, Jessica
Sent: Wednesday, October 03, 2018 10:23 AM
To: Hopper, Gary; 'Repdawelch@hotmail.com'; Welch, David; 'Cushing, Renny'; Cushing, Renny; 'james.vara@doj.nh.gov'; 'tnadeau@courts.state.nh.us'; 'EKelly@courts.state.nh.us'; 'albert.scherr@law.unh.edu'; 'rhawkes@nhpd.org'; 'tboropd@worldpath.net'; 'mmorrison@londonderrynhpd.org'; 'welch4016@outlook.com'
Cc: 'Dan Feltes'; Feltes, Dan
Subject: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES
Attachments: SB 556 October Notices.pdf

Good Morning Commission Members,

This is a reminder that the Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services is scheduled to meet on the following dates:

Friday, October 19th @ 12:00, Room 301 of the Legislative Office Building
Monday, October 22nd @ 12:00, Room 301 of the Legislative Office Building
Monday, October 29th @ 3:00, Room 301 of the Legislative Office Building

*Please note the 3:00 start time on Monday, October 29th. If you have any questions, please feel free to contact me via email or at the telephone number below. Have a great day!

Jessica A. Bourque
NH State Senate
Administrative Assistant to:
Senator Kevin Cavanaugh, District 16
Senator Dan Feltes, District 15
Senator Martha Hennessey, District 5
Legislative Office Building
Room 5
Concord, NH 03301
(603) 271-3067

Bourque, Jessica

From: Bourque, Jessica
Sent: Friday, October 26, 2018 9:45 AM
To: Hopper, Gary; 'Repdawelch@hotmail.com'; Welch, David; 'Cushing, Renny'; Cushing, Renny; 'james.vara@doj.nh.gov'; 'tnadeau@courts.state.nh.us'; 'EKelly@courts.state.nh.us'; 'albert.scherr@law.unh.edu'; 'rhawkes@nhpd.org'; 'tboropd@worldpath.net'; 'mmorrison@londonderrynhpd.org'; 'welch4016@outlook.com'; 'bailnu@yahoo.com'
Cc: 'Dan Feltes'; Feltes, Dan
Subject: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES
Attachments: Hon. Susan Ashley.pdf; Chief Shagoury.pdf; LT Morrison.pdf

Dear Commission Members,

Chair/Senator Feltes wished for me to forward to you the attached straw proposals for consideration on Monday. They are from the Court system, Chief Shagoury, and Lieutenant Morrison. Chair/Senator Feltes was going to add a straw proposal on text messaging, but believes it is captured in the note from the Court system. The only other straw proposal Chair/Senator Feltes would like the Commission to consider is the following:

- Legislative language that says, to the extent a court is employing a risk assessment tool, the initial risk assessment shall be done by an independent third party not associated with defense or prosecution, and also not the bail commissioner(s).
- Legislative language that says, to the extent practicable, courts and jails shall track bail decisions/defendants and provide data on the impact of SB 556, including, but not limited to, recidivism rates, failure to appear, allegations of offenses pre-trial, etc.

Thank you, Jessica

Jessica A. Bourque
NH State Senate
Administrative Assistant to:
Senator Kevin Cavanaugh, District 16
Senator Dan Feltes, District 15
Senator Martha Hennessey, District 5
Legislative Office Building
Room 5
Concord, NH 03301
(603) 271-3067

20f7

Bourque, Jessica

From: Hon. Susan Ashley <SAshley@courts.state.nh.us>
Sent: Thursday, October 25, 2018 5:20 PM
To: Feltes, Dan
Cc: Hon. David D. King; Hon. Edwin W Kelly; Gina Belmont; Kate E. Geraci
Subject: text messaging fiscal impact

Sen. Feltes,

In response to your request about the fiscal impact on the court to implement a text messaging system for criminal cases, we know that we would need a staff person dedicated to making such an endeavor work. Therefore, we offer the following description of the need and cost for such a position.

As text messaging has shown to reduce failures to appear at court hearings in other jurisdictions across the country, this year we built and piloted an initiative in divorce/parenting mediation to use text reminders about upcoming mediation sessions. This was a small project to create the infrastructure and to prove the concept. Based on the success of that effort and on similar efforts at other courts, we are ready to expand to other case types and circumstances where text reminders would likely assist with increasing attendance at court.

In 2017, there were nearly 75,000 criminal cases filed in the circuit and superior courts. These cases likely led to over 175,000 arraignments or trials. Criminal cases are the largest case type in the trial courts. We would benefit from the dedicated efforts of a person who would be hired to oversee the text messaging initiative and to influence issues around the failure to appear of defendants on bail. Initially, this person would help with developing requirements, design and testing of the text messaging application in criminal cases. This will lead to form and practice changes so that cell phone numbers are collected and recorded in the court's case management system consistently. Once the system is live, the role would be to monitor and enhance these efforts and others relating to the failure to appear of criminal defendants. Additional envisioned work includes assisting with streamlining criminal case process flows from the bail commissioner to the court and from the court to the defendant, other bail related court form development and improvement, input on issues related to the collection and analysis of failure to appear and other bail data, and involvement with bail commissioner education, support and coordination.

A part time bail reform coordinator at 29 hours per week would likely cost about \$47,065 per year, assuming a Labor Grade 30 on the NHJB matrix and about \$62,862 per year assuming a Labor Grade 42. A full time bail reform coordinator would likely cost about \$91,924 per year, assuming a Labor Grade 30 and \$111,778 at a Labor Grade 42. Additionally, we anticipate a nominal cost to configure the text messaging system to accommodate text messaging in criminal cases. That cost is under \$15,000 and would be absorbed by the NHJB.

I hope this is responsive to your request.

Judge Kelly will be attending the next committee meeting on Monday, and should be able to discuss further with the group.

Thanks,
Susan Ashley

3 of 7

Bourque, Jessica

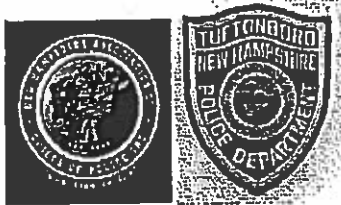
From: Andy Shagoury <tboropd@worldpath.net>
Sent: Thursday, October 25, 2018 6:06 PM
To: Feltes, Dan; Dan Feltes
Subject: Suggestions for pretrial and bail commission

I have a couple of ideas to add:

- Bail commissioner fee should be paid by the State
- Pretrial services should be available statewide. It could be through the Department of Corrections in counties that do not have a program.
- There should be a presumption that anyone with three or more prior failures to appear at court hearings do not qualify for release. They may rebut it by a preponderance of the evidence that they will appear. There may be other ideas on rebuttable presumption on types of cases that burden of proof goes to the defendant.
- The commission should continue to work on this and have a county attorney added to it.

Chief Andrew Shagoury
Tuftonboro Police Department
PO Box 98, 240 Middle Road
Center Tuftonboro, NH 03816
Phone: 603-569-8695
Fax: 603-569-8642

President 2017-2018



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Bourque, Jessica

From: Mark P. Morrison <mmorrison@londonderryhpd.org>
Sent: Thursday, October 25, 2018 4:56 PM
To: Feltes, Dan
Subject: Commission on Pretrial - legislative changes
Attachments: Commision on Pretrial and Bail Legislative changes.docx

Senator Feltes,

I hope this email finds you well. Please find the attached word document with my suggested legislative changes to RSA 597:2. Thank you for your consideration to this matter, and I look forward to our next meeting.

Mark Morrison

Thank You,

Lieutenant Mark Morrison
Londonderry Police Department
268A Mammoth Road
Londonderry, NH 03053
Phone: 603-432-1118 Cell: 603-548-0316
Email: mmorrison@londonderryhpd.org



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Town of Londonderry, NH

Lt. Mark Morrison

268-A Mammoth Road

Londonderry NH, 03053

603-432-1118 x4104

Senator Dan Feltes

Legislative Officer Building 101-A

33 N. State Street

Concord NH, 03301

Senator Feltes,

Please find the below suggestions for legislative changes to RSA 597:2. I will do my best to make the changes easy to follow by labeling the Roman Numeral Section, paragraph or subparagraph, typing all or part of the paragraph in question, and then indicating (add, strike, etc) in red font color immediately following.

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

ADD a new subparagraph (c) Detained pursuant to paragraph IV; *NOTE: This would move the existing subparagraph (c) to a new subparagraph (d).*

- III. (a) The Court shall order the pre-arraignment or pretrial release of the person on his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court...

STRIKE last sentence of Paragraph III. "Except that such dangerousness determination shall not be based solely on evidence of drug or alcohol addiction or homelessness."

STRIKE subparagraphs III(b), III(b1), III(b2), and III(b3)

- III. (c) For purposes of the court's determination under this paragraph, evidence of homelessness or a lack of a mailing address by itself shall not constitute prima facie evidence of a lack of reasonable assurance that a person will now appear.

STRIKE subparagraph (1) "Shall not impose a financial condition that will result in the pretrial detention of a person solely as a result of that financial condition."

- III. (e) If the court or justice determines by a preponderance of the evidence that the release described in this paragraph will not reasonably assure the appearance of the person, the court shall issue an order that includes the following conditions, ...

STRIKE "subject to the limitations in subparagraph (b)(1):"

IV (a) If a person is charged with any criminal offense, and offense listed in RSA 173-B:1, I or a violation of a protective order...

STRIKE "by clear and convincing evidence,"

ADD "by a preponderance of the evidence" to take the place of the aforementioned "by clear and convincing evidence," verbiage struck.

IV (a) If a person is charged with any criminal offense, and offense listed in RSA 173-B:1, I or a violation of a protective order...(skip to sentence being modified). The court may consider...

STRIKE "...the following conduct as evidence of posing a danger..."

ADD The court may consider "all relevant factors bearing on the issue of dangerousness,"

ADD new subparagraphs (8-16)

- (8) Criminal History
- (9) Motor Vehicle History
- (10) Probation/ Parole Status
- (11) History of violating Probation/ Parole
- (12) Active use of controlled substances
- (13) Evidence of distribution or heroin, fentanyl, carfentanyl, cocaine, crack cocaine, methamphetamine, or other opiod class substances.
- (14) Facts underlying the charged conduct
- (15) History of violating Bail Orders
- (15) History of violating court ordered no contact provisions

Thank you for your consideration to this matter. I have received a lot of feedback from many different sources and I have tried to summarize most of that feedback in these suggestions. I look forward to the discussions that will follow as we work towards a common goal, even if some commission members are driving on different roads to get there. Should you have any questions, feel free to reach out; I am happy to assist in any way I can.

Respectfully Submitted,

Mark Morrison

Bourque, Jessica

From: Hon. Tina Nadeau <TNadeau@courts.state.nh.us>
Sent: Wednesday, September 19, 2018 9:20 AM
To: Bourque, Jessica; Feltes, Dan
Subject: RE: SB 556 Commission – SAVE THE DATES
Attachments: Data Subcommittee 8 14 18.docx; Data Subcommittee 9.12.18.docx; Pretrial Services Sub Minutes 8-8-18.docx; NH-VPAI Scoring Sheet 2018-01edit 2-22-18.docx; RA Sub Minutes 7-19-18.docx; RA Sub Minutes 8-30-18.docx; ICJJC Legislative Committee Minutes 8.24.18.docx; ICJJC Legislative Committee Minutes 9.10.18.docx

Follow Up Flag: Follow up
Flag Status: Flagged

See attachments with the October 19th meeting.

Dear Senator Feltes

Attached you will find the subcommittee minutes for four of the ICJJC subcommittees looking a bail issues. The committees included, Data Collection, Pre trial Services, Risk Assessment and Legislative. The Education subcommittee did not meet. The full ICJJC met yesterday to review the subcommittee reports and decide next steps. I will provide you with those minutes as soon as they are complete. Thanks. TLN

From: Bourque, Jessica [<mailto:Jessica.Bourque@leg.state.nh.us>]
Sent: Tuesday, September 18, 2018 11:02 AM
To: Hopper, Gary; Repdawelch@hotmail.com; Cushing, Renny; Cushing, Renny; james.vara@doj.nh.gov; Hon. Tina Nadeau; Hon. Edwin W Kelly; albert.scherr@law.unh.edu; External Randy Hawkes; tboropd@worldpath.net; mmorrison@londonderrynhpd.org
Cc: Dan Feltes; Feltes, Dan
Subject: SB 556 Commission – SAVE THE DATES

Hello Commission Members, please see below from Senator Feltes:

Hi everyone – Below is the schedule for our Commission discussed today, along with tentative agendas. Please put these in your calendar. Thank you for your time and your service on this Commission. Dan Feltes

Substantive Meeting on Friday, October 19. 12 p.m. to 3 p.m. in Room 301 of the LOB

- 1.) Recommendations from ICJJC
- 2.) Discuss Recommendations from ICJJC
- 3.) Discussion of Process/On-the-Ground Implementation of SB 556
- 4.) Public Testimony/Input

Substantive Meeting on Monday, October 22. 12 p.m. to 3 p.m. in Room 301 of the LOB

- 1.) Inventory of Pre-Trial Services/SUD Services Plan
- 2.) Risk Assessment Discussion
- 3.) Text Messaging Pilot Results/Failure to Appear & Scheduling Issues
- 4.) Public Testimony/Input

Recommendations Meeting on Monday, October 29. 3 p.m. to 4:30 p.m. in Room 301 of the LOB

- 1.) Discuss Proposed Recommendations for Report
- 2.) Discuss & Prepare Report

3.) Next Steps, If Any

Jessica A. Bourque

NH State Senate

Administrative Assistant to:

Senator Kevin Cavanaugh, District 16

Senator Dan Feltes, District 15

Senator Martha Hennessey, District 5

Legislative Office Building

Room 5

Concord, NH 03301

(603) 271-3067

Bourque, Jessica

From: Hon. Tina Nadeau <TNadeau@courts.state.nh.us>
Sent: Friday, October 12, 2018 11:01 AM
To: Feltes, Dan
Subject: FW: Pretrial Services Update
Attachments: Merrimack County.pdf; Grafton County.docx; Belknap County.docx; Survey

From: Blodgett, Sarah [<mailto:Sarah.Blodgett@jc.nh.gov>]
Sent: Wednesday, October 10, 2018 1:54 PM
To: Hon. Tina Nadeau; Ashlyn St. Germain; Beth Sargent; Serafin, Brady; KENNEDY, BYRY; Cathy Green; Chief Shagoury; Christopher Casco; David Welch; Devon Chaffee; External Donna Sytek; Hon. Edwin W Kelly; Gilles Bissonnette (gilles@aclu-nh.org); Gordon MacDonald; Hon. David D. King; Chief Justice Robert J Lynn; Hourman, Johanna; Howard J. Zibel; James Ciani; James Mull; james.vara@doj.nh.gov; Formella, John; Karen Gorham; Kimberly Rice; icpantelakos@comcast.net; Scholette, Lyn; lynda.ruel@doj.nh.gov; Ryan, Maureen; Mike McAlister; External Pat Conway; External Randy Hawkes; Senator Laske; ddionne@hillsboroughcountydor.org; Timothy Rourke
Subject: Pretrial Services Update

Good afternoon,

Attached please find information that Randy has collected on some of the pretrial services programs in the State.

Thanks,
Sarah

Sarah T. Blodgett
Executive Director
NH Judicial Council
25 Capitol Street, Room 424
Concord, NH 03301-6312
603-271-3592

Merrimack County

Mull, James

From: Blodgett, Sarah <Sarah.Blodgett@jc.nh.gov>
Sent: Monday, August 20, 2018 10:04 AM
To: Mull, James
Cc: Randy Hawkes
Subject: Pretrial Services

Dear Jim,

Hope you had a good weekend. We are following up on the subcommittee meeting and wanted to send out a request to all pretrial services programs requesting the following info:

1. Budget history for past five years to include appropriation and actual budget.
2. Any restrictions on admission to the program.
3. Services available through the program.
4. Services available in the community.
5. Access to LADAC.
6. The current number of program employees.
7. The current number of program participants.
8. What county organization is the program connected to?
9. What screening process is used?
10. What are the potential consequences for a violation?
11. What percentage of participants is charged with new criminal activity during the supervision period?
12. What percentage of new criminal activity includes a violent crime?
13. What percentage of new criminal activity includes a drug-related charge?
14. What is the failure to appear rate for participants?
15. If money was not an issue, what resources would be most helpful to the program?

Randy has contact info for the Strafford County program, but we were hoping you could provide contact info for the other programs.

Also, do you know the name of the gentleman from probation and parole who attended the meeting?

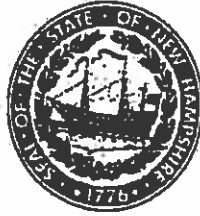
Thanks so much,
Sarah

Sarah T. Blodgett
Executive Director
NH Judicial Council
25 Capitol Street, Room 424
Concord, NH 03301-6312
603-271-3592

MERRIMACK COUNTY PRETRIAL SERVICES

DIRECTOR
James V. Mull

COURT / JAIL LIAISON
Ziva Summers



PRETRIAL OFFICERS

Kevin Ganley
Lisa Robinson
Tom Cray
Troy Simpson

163 North Main Street
Concord, New Hampshire 03301
Telephone: (603) 226-1921 Fax: (603) 228-2143

1. Budget History for past five years to include appropriation and actual budget.
 - a. Merrimack County Pretrial Services shares their budget with the Diversion Center. Both programs share nearly all resources including on occasion personnel. Vehicle maintenance also includes five (5) vehicles of which two (2) are used by County Attorney investigators. I believe that the Pretrial portion of the annual budget is about forty percent (40%) of the collective budget. Below I have broken down the budget to reflect the annual amounts and the best estimate of the Pretrial Services portion.

Year	Amount Approved	Actual Usage	Pretrial Services Use
2013	\$818,256	\$712,969	\$285,188
2014	\$812,201	\$758,371	\$303,588
2015	\$803,409	\$758,999	\$303,600
2016	\$817,910	\$720,513	\$288,205
2017	\$846,853	\$784,198	\$313,920
2018	\$920,463		\$320,000 (estimate)

2. Any restrictions on admission to the program.
 - a. MCPTS uses its own criteria of determining client eligibility to our program. MCPTS has reviewed many screening tools used by other programs throughout the country. Many are good but in my experience too objective and limit subjectivity that I find essential to successful program management. I have listed some things that may disqualify you to MCPTS:
 - i. AWOL or absconding history
 - ii. Case Manager or office conflicts
 - iii. Cases not w/in Merrimack County
 - iv. Capitol offenses or serious crimes of violence
3. MCPTS shares services and programs with the Diversion Center below is a list of classes available to client willing to participate:
 - a. Women's Group
 - b. Men's Group
 - c. Operation Impact
 - d. Substance Education

- e. DMV Rules and Regulations
 - f. Prime for Life
 - g. What is Mindfulness
 - h. Employer Expectations & Keeping a Job
 - i. Finding Fun
4. Services available in the Community.
- a. The Concord and Franklin areas have a number of programs from mental health to drug treatment and intervention facilities. Many of these community services work with the area hospitals and MCPTS.
 - i. AA
 - ii. NA
 - iii. FAST
 - iv. Riverbend
 - v. Hope for Recovery
5. Access to LADC
- a. Yes, MCPTS has an on staff independent part-time contracted MLADC.
6. The current number of program employees.
- a. One Director
 - b. Two fulltime Case Managers
 - c. One part-time Case Manager
 - d. One part-time Court Liaison officer
 - e. One part-time Field Investigator
 - f. One fulltime Secretary (shared with Diversion Center)
7. As of September 10, 2018 we have 125 fully Active and supervised clients. Through the course of this year we have supervised over 200 clients.
8. What county organization is the program connected to
- a. County Attorney
9. What screening process is used
- a. MCPTS has taken a combination of known screening and assessment tools incorporating portions of them into our own process experience. I have attached a copy of our screening questionnaire to this information.
10. What are the potential consequences for violations
- a. Verbal warnings
 - b. Written Non-Compliance Reports
 - c. Filing for bail revocation
 - d. Arrest both on-site and or by warrant

11. What percentage of participants is charged with new criminal activity during supervision period
 - a. 10% (2012)
12. What percentage of participants is charged with new criminal activity includes a violent crime
 - a. <1%
13. What percentage of participants is charged with new criminal activity includes drug-related charge
 - a. <10%
14. What is the failure to appear rate
 - a. <10%
15. If money was not an issue, what resources would be most helpful to program
 - a. Full-time, on staff MLADC
 - b. Safe, Sober Housing
 - c. Aftercare Treatment Programs

Questions & Answers

1. *How long has your pretrial supervision program been in existence?*
**Merrimack County started in July – 2000, 1st client August – 2000
Completed 16 years of operation**

2. *How did it get started? Who initiated the dialogue? What role did the Court/Judges play?*

National PTS started in 1978

During 1998 – 2000 the then elected County Attorney Michael Johnson researched for alternative to incarceration initiatives to help with jail over population.

The research was then taken before the Judges within Merrimack County for their approval. These meetings also involved the prosecutors, defense attorneys, jail personnel and care providers to formulate a program that would best suit the County's needs.

3. *How is your pretrial program funded? Are there supervision fees?*

The program is funded by County based taxes. There is no fee for any pretrial client – Accept if court ordered to have Electronic Monitoring (which is afforded by the individual) or if found appropriate for Anger Management counseling classes (after screening). They must afford this cost as well.

4. *What is the relative cost of pretrial supervision vs. detention at the jail?*

The jail has provided a cost figure of approximately \$181.00 per day to house an inmate. At 181.00 a day x 365 = \$66,065.00 a year. If you were to times that by "100" inmates = \$6,606,500.00 per year.

PTS budget for the year is approximately \$400,000.00

Actual and marginal costs would vary, but given the expense to house an inmate, PTS is a definite savings.

5. *Has pretrial supervision reduced the census at the jail?*

125 - 150 is average number of defendants on PTS any given time

400 defendants on PTS in 2016 (50 % of interviews)

117 Average supervision days 2016

**42,000 total supervision days defendants were on PTS =
\$6,342,000,00 statistical (not real) savings.**

6. *What are criteria for admission into pretrial supervision?*

Assignment to Pretrial Services can only be done by a Judge through a court ordered bail condition. PTS takes all varying level of crimes punishable by a possible jail sentence. These would be relating to charges of Class A Misdemeanor up to and including Class A Felony, excluding Murder.

7. *How does the program respond to violations of the conditions of pretrial release?*

- a. When a defendant assigned to PTS supervision violates a condition of their release, unless otherwise ordered, it is initially documented in the form of a "Non-Compliance" report.**
- b. A copy of this report is then forwarded to the court, prosecutor and defense attorney informing them of the violation.**
- c. If the defendant continues a course of non-compliant behavior, the prosecutor may choose to file a motion to "Revoke" the defendant's bail. The court will then schedule a hearing and bail may be re-addressed.**
- d. If the violation is flagrant, the PTS officers are sworn deputy sheriffs with powers of arrest and may take the defendant into custody and charge them with "Breach of Bail".**

Pretrial Services Interview Questions

Verify the following:

- ☐ Client's name and proper spelling
- ☐ Address, phone numbers
- ☐ SSN and DOB
- ☐ Identify all persons the client lives with, make special notations on children under 17yrs old
 - a. Obtain as much contact info as you can family, friends, girl / boyfriends etc. Be sure to obtain as many phone numbers as possible, they are the best source of verifying the interview information when returning to the office
- ☐ Obtain driver's license status and means of transportation to Concord
- ☐ Probation / Parole status
 - a. Date of probation release, often times MCPTS is added to probation because of a timely release date.
 - b. It is a good idea if their status is in doubt to follow-up by calling Concord Probation. This avoids needless double supervision and violators slipping through the "cracks" without 72 hr. Probation holds
- ☐ School or job information
 - a. Full time / part time
 - b. Employer's business name, address and phone number
 - c. Type of work / skill or position
 - d. Length of employment
- ☐ Status of any Current / Pending / Prior Restraining or Protective Orders

Client's Note Entries:

- ☐ Pending court cases, court jurisdiction, charges, and court dates
 - a. Felony conviction history, charges and year of conviction(s)
- ☐ State or City hospital patients, especially those with mental illness often times are difficult clients for MCPTS. Our supervision constraints more often is too much for them to comply with, and places them at a disadvantage to complete the program. Serious consideration with mentally challenged persons should be made before making a recommendation for supervision
- ☐ Dynamic living situations should be noted and briefly explained
- ☐ Ask if client has any pending Protective / Restraining Orders

Grafton County

1. Budget history for past five years to include appropriation and actual budget.

We have only had the program up and running for a year and two months. We didn't budget any extra money specifically for pretrial services. We utilize urine tests and breathalyzer tubes from supplies we currently have for our other program. We charge \$10 a week for the program if you check in in-person to recoup some of that money.

2. Any restrictions on admission to the program.

We do not supervise registered sex offenders. If you cannot make it to one of the locations we have offenders check in at, or, if you do not have housing confirmed we do not accept you.

3. Services available through the program.

We do drug & alcohol testing, court date reminders. We assist with job applications, treatment meetings/referrals. We also have a felonies first court date phone call system, where we give reminder calls out to defendants reminding them of their arraignments.

4. Services available in the community.

MAT (medicated assisted treatment), counseling, IOP, etc...

5. Access to LADAC.

There are LADACS in the area, but ours at the jail isn't readily available if needed.

6. The current number of program employees.

3

7. The current number of program participants.

10

8. What county organization is the program connected to?

Grafton County House of Corrections

9. What screening process is used?

The Colorado Pretrial Assessment tool – as well as face to face interview with Community Corrections Staff, past jail history, etc..

10. What are the potential consequences for a violation?

Termination from the program, re-incarceration, increased check-ins, application of a GPS monitoring ankle bracelet, other consequences as the program sees fit.

11. What percentage of participants is charged with new criminal activity during the supervision period?

Approximately 14%

12. What percentage of new criminal activity includes a violent crime?

We haven't had any new arrests for a violent crime. Violations of protective orders – but we haven't had an assault, just someone being in the vicinity of another they shouldn't have been.

13. What percentage of new criminal activity includes a drug-related charge?

Approximately 5% for drug or alcohol related offenses.

14. What is the failure to appear rate for participants?

I'm honestly not sure – the Court hasn't been keeping us up to date if people haven't appeared. Everyone who regularly checked in – made it to court – it was people who were already non-compliant with the program who continued to not show.

15. In what ways does the program assure the safety of the community?

When people have the restriction of a GPS ankle bracelet we can monitor their every move and ensure they aren't going anywhere near protected party's residences, jobs, etc.. when not being monitored it's much harder to assure that they're continuously doing the right thing. Having some services in place, counseling, treatment, etc.. & the added responsibility of check-ins sometimes helps get people on the right track which in turn creates a healthier person in the community, but there is no guarantee that they won't re-offend.

16. If money was not an issue, what resources would be most helpful to the program?

A LADAC pre and post entry into the program. Transportation options for clients. Alcohol monitoring bracelets and other drug testing options for more round the clock monitoring.



**BELKNAP COUNTY
PRETRIAL SERVICES**
76 COUNTY DRIVE
LACONIA, NEW HAMPSHIRE 03246-2922

TELEPHONE: 603-729-1203
FAX: 603-524-2574

TRICIA T. THOMPSON
Pretrial Services Coordinator

1. Budget history for past five years to include appropriation and actual budget. It should be noted that Belknap County Pretrial has only been operating since 6/18/18 and currently has one part time staff member.
Current budget from 6/18/18 till FY19 estimated \$40,000 next FY 19 request \$115,375.00 includes 2 more staff members and equipment that wasn't in the startup budget.
2. Any restrictions on admission to the program. Defendants on probation or parole, defendants that live out of County, and capital murder or serious crimes of violence. It should be noted if a defendant is ordered to Pretrial services no matter our criteria we will supervise per court order.
3. Services available through the program. HISET prep and testing. Prime for life, thinking for a change, batterer's intervention (Emerge Model only), smart recovery, anger management, Conflict Management, introduction to probation and parole, substance abuse testing with lab results, Electronic monitoring and curfew checks by a Special Deputy.
4. Services available in the community. Horizons / Nathan Brody (Intensive outpatient program), Interim services while waiting for treatment. Lakes Region Mental Health, Several substance abuse service providers, Sexual offender outpatient treatment. Unemployment, Stand up Laconia, Navigating Recovery and self-help groups.
5. Access to LADAC. YES
6. The current number of program employees. 1
7. The current number of program participants. 85 changes daily
8. What county organization is the program connected to? Belknap County Department of Corrections (Community Corrections).
9. What screening process is used? Ohio Risk Assessment System: Pretrial Assessment Tool and a demographic questioner (See Attached).
10. What are the potential consequences for a violation? Non-Compliance report filed with the county attorney and defense attorney that could result in a motion to revoke bail and potential incarceration.
11. What percentage of participants is charged with new criminal activity during the supervision period?
Currently I am at a rate of 4.2% since 6/18/18 till 9/19/18

Last update 6/21/18

12. What percentage of new criminal activity includes a violent crime? 1.68%

13. What percentage of new criminal activity includes a drug-related charge? 2.52%

14. What is the failure to appear rate for participants? 18% as of the end of August 2018.

15. In what ways does the program assure the safety of the community? In person reporting, electronic monitoring, resident verification, curfew checks, notification of non-compliance (could result in a motion to revoke bail). Substance abuse testing. A special deputy that has the ability make an arrest if a new criminal offense is being committed.

16. If money was not an issue, what resources would be most helpful to the program? Fully staffed, proper location to supervise defendants with all support services in one location. All pretrial officers certified. All counties on the same data base so there would be state wide visibility of defendant's on bail supervision (example probation/Parole data system).



**BELKNAP COUNTY
PRETRIAL SERVICES**
76 COUNTY DRIVE
LACONIA, NEW HAMPSHIRE 03246-2922

TELEPHONE: 603-729-1203
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4. Services available in the community. Horizons / Nathan Brody (Intensive outpatient program), Interim services while waiting for treatment. Lakes Region Mental Health, Several substance abuse service providers, Sexual offender outpatient treatment. Unemployment, Stand up Laconia, Navigating Recovery and self-help groups.
5. Access to LADAC. YES
6. The current number of program employees. 1
7. The current number of program participants. 85 changes daily
8. What county organization is the program connected to? Belknap County Department of Corrections (Community Corrections).
9. What screening process is used? Ohio Risk Assessment System: Pretrial Assessment Tool and a demographic questioner (See Attached).
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Strafford County

Bourque, Jessica

From: Carrie L. Conway <cconway@co.straftord.nh.us>
Sent: Wednesday, September 26, 2018 10:48 AM
To: Randy Hawkes
Subject: Survey
Attachments: Community Corrections Budget vs Actual.xlsx; Copy of hoccostrperday2010-2017.xls; NHPD Report Request Sept 18 2018.docx; POTENTIAL CONSEQUENCES FOR A VIOLATION ON PRE.docx; Various Answers.docx

Hi Randy,

Please find documents attached that you requested.

Let me know if you require anything further.

All the best,
Carrie

Carrie Lover Conway MSW, Certified Public Manager, Certified Correctional Officer
Straftord County Criminal Justice Programming Coordinator
259 County Farm Road, Suite 103
Dover, NH 03820
603-516-7195 (P)
603-740-2955 (f)

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STRAFFORD COUNTY
COMMUNITY CORRECTIONS, DRUG COURT, TRANSITIONAL HOUSING
BUDGET vs ACTUAL - 2013-2017

	<u>Budgeted Expenditures</u>	<u>Actual Expenditures</u>
2017	\$1,487,439.00	\$1,443,521.87
2016	\$1,351,218.00	\$1,450,681.50
2015	\$1,493,517.00	\$1,553,338.18
2014	\$1,464,134.00	\$1,568,695.11
2013	\$1,477,525.00	\$1,479,098.12

POTENTIAL CONSEQUENCES FOR A VIOLATION ON PRE-TRIAL SERVICES

No action taken by the state

Increased level of supervision

Revocation

Increase in Cash Bail amount

SUD/MH Referral

Case resolution/sentencing

SCREENING PROCESS FOR PRE-TRIAL ASSESSMENTS

Stafford County Pre-Trial Assessment Tool

Criminal Record Check

Previous supervision compliance/non-compliance

Probation/Parole recommendations

Acute MH/SUD crisis

Information obtained from HOC intake

**Strafford County House of Corrections
Net Cost Per Day Per Inmate**

	<u>2016</u>	<u>2017</u>
Corrections Expenses	\$13,714,415.44	\$14,583,743.98
Corrections Revenues	\$8,667,731.29	\$8,988,392.66
Net Expenses	\$5,046,684.15	\$5,595,351.32
Net Cost Per Day Per Inmate (438)	\$31.57	\$35.00
Community Corrections, Trans. Housing, & Drug Court Expenses	\$1,666,764.50	\$1,775,201.00
Revenues	\$267,381.71	\$233,258.25
Net Expenses	\$1,399,382.79	\$1,541,942.75
Net Cost Per Day Per Inmate (435)	\$8.81	\$9.71
All Corrections Expenses	\$15,381,179.94	\$16,358,944.98
All Corrections Revenue	<u>\$8,935,113.00</u>	<u>\$9,221,650.91</u>
Net Expenses	\$6,446,066.94	\$7,137,294.07
Net Cost Per Day Per Inmate (873)	\$20.23	\$22.40

New Hampshire Public Defender's Pretrial Statistics Request of September 18 2018

6. Current # of program employees? 18 total for SCCCP. 4.25 for Pretrial Supervision

7. Current # of Program Participants?

Pretrial Participants 2017 – Average Head Count

- Absconding 35
 - Active 129
 - In HOC 21
 - In Treatment 10
- Total Participants Pretrial (Excluding Absconding) = 160

11. % of Participants Charged with New Crimes in 2017

- 559 New violations filed
- 33 (6%) were New Charges
- 463 Pretrial Cases Closed in 2017
- 26 (6%) Participants Picked up New Charges While on Supervision

12. % of Charges Classified as Violent Crime in 2017 (being supervised on the program – intake date)

- 886 Total Charges
- 148 (17%) were Violent Offenses

13. % of Charges Classified as Drug Related Crimes in 2017 (being supervised on the program – intake date)

- 886 Total Charges
- 119 (13%) were Drug Related Offenses

14. Failure to Appear Rate

- 1027 Total # Hearings
- 6 (>1%) Failed to Appear

2. No restrictions as far as admissions to Pre Trial Services. We follow the Court's orders.

3 and 4: Services available from and through the program include; Case Management (to include streamlined, coordinated access to ancillary services in the community, face to face meetings), Transitional Housing, limited transportation to appts, Re-Entry Medically Assisted Treatment, Electronic Monitoring such as GPS and Sobriator, drug testing, COAST bus vouchers, phone call reminders for court appearances, mental health and substance misuse referrals, community work program to offset cost of electronic monitoring fees.

5. Streamlined, coordinated referrals for LADC Evals at Southeastern New Hampshire Services and other community providers through MOU's.

8. Strafford County Community Corrections is under the auspices of The Strafford County Commissioners and has its own budget separate from the House of Corrections and Sheriff's Office. All Pre Trial Staff are Certified Correctional Officers.

15. We conduct Bail Assessments to identify red flags. We follow the Court's Orders. We utilize GPS units with exclusion zones and also Sobriators. We have an Emergency on Call phone that is staffed 24 hours per day so clients and/or victims and/or Police Depts can call us with any issues or questions or concerns. We conduct initial home visits and subsequent home visits case by case, accompanied by Local Police Dept or Sheriff's Deputy.

16. If money was not an issue- additional safe, sober and affordable housing in the community, increased access to inpatient mental health services, more streamline approach for Competency hearings.

Bourque, Jessica

From: Randy Hawkes <rhawkes@nhpd.org>
Sent: Friday, October 26, 2018 12:40 PM
To: Feltes, Dan; Dan Feltes; Hopper, Gary; Bourque, Jessica; Repdawelch@hotmail.com; Welch, David; Cushing, Renny; Cushing, Renny; james.vara@doj.nh.gov; tnadeau@courts.state.nh.us; EKelly@courts.state.nh.us; albert.scherr@law.unh.edu; tboropd@worldpath.net; mmorrison@londonderrynhpd.org; welch4016@outlook.com; bailnu@yahoo.com
Cc: Lara Saffo (lsaffo@co.grafton.nh.us); 'Andy Shagoury'
Subject: RE: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES
Attachments: proposed compromise to amendment re offer of proof at initial hrg and video testimony at subsequent hrg.doc

Among the issues raised at the Commission's hearings was the ability of police officers who work in towns distant from the superior courts to be available on short-notice to provide in-court testimony at preventive detention hearings. This is especially true regarding their availability for the initial appearance.

County Attorney Saffo and I worked on a proposal to address the issue which might be acceptable to all parties.

I have attached the proposed language (See Section IV (b)) for the Commission's consideration and possible discussion on Monday.

From: Bourque, Jessica <Jessica.Bourque@leg.state.nh.us>
Sent: Friday, October 26, 2018, 9:43 AM
To: Hopper, Gary <Gary.Hopper@leg.state.nh.us>; Repdawelch@hotmail.com; Welch, David <y-chcj@outlook.com>; Cushing, Renny <reprennycushing@gmail.com>; Cushing, Renny <Renny.Cushing@leg.state.nh.us>; james.vara@doj.nh.gov; tnadeau@courts.state.nh.us; EKelly@courts.state.nh.us; albert.scherr@law.unh.edu; Randy Hawkes <rhawkes@nhpd.org>; tboropd@worldpath.net; mmorrison@londonderrynhpd.org; welch4016@outlook.com; bailnu@yahoo.com
Cc: Dan Feltes <danfeltes@gmail.com>; Feltes, Dan <Dan.Feltes@leg.state.nh.us>
Subject: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Dear Commission Members,

Chair/Senator Feltes wished for me to forward to you the attached straw proposals for consideration on Monday. They are from the Court system, Chief Shagoury, and Lieutenant Morrison. Chair/Senator Feltes was going to add a straw proposal on text messaging, but believes it is captured in the note from the Court system. The only other straw proposal Chair/Senator Feltes would like the Commission to consider is the following:

- Legislative language that says, to the extent a court is employing a risk assessment tool, the initial risk assessment shall be done by an independent third party not associated with defense or prosecution, and also not the bail commissioner(s).
- Legislative language that says, to the extent practicable, courts and jails shall track bail decisions/defendants and provide data on the impact of SB 556, including, but not limited to, recidivism rates, failure to appear, allegations of offenses pre-trial, etc.

Thank you, Jessica

Bourque, Jessica

From: Andy Shagoury <tboropd@worldpath.net>
Sent: Tuesday, October 30, 2018 8:03 PM
To: Cushing, Renny; Cushing, Renny; Elizabeth C. Sargent; Chief David B. Goldstein; Mark Chase; External Pat Conway; Lyn Schollett; Attorney General
Cc: Feltes, Dan; 'Dan Feltes'; Hopper, Gary; Bourque, Jessica; 'repdawelch@hotmail.com'; Welch, David; 'James Vara'; 'Tina Nadeau'; 'Edwin Kelly'; 'Buzz Scherr'; mmorrison@londonderrynhpd.org; 'David Welch'; bailnu@yahoo.com; Isaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety; 'Randy Hawks'
Subject: RE: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

While interesting, it seems pointless to do a deep dive on such a complex issue as mental health and the criminal justice system when something relatively simple, easy to fix, and clearly a problem from the ample input we have already received is not addressed. I am talking about the issue of failures to appear. We don't need to study it further. We already had plenty of testimony. We heard from multiple people about the issue of how the changes in the law has made it worse. Yet we can't even get a simple fix for that problem addressed. Clearly if the courts can't agree on the form to use for the law, it lacks clarity and needs to be fixed.

I repeat what I said, this was not what we were told was supposed to happen. As it stands today, what is the point of giving the court money for text messaging if there is no consequence for failing to appear? What about the elderly who are victims of fraud or other non-violent crime? All a defendant has to do since this passed is fail to appear and stall it until the victim cannot testify to get away with it. Meanwhile the victim is deprived of resources they may need to live while awaiting a resolution that may never come. What about taxpayers who pay for an extradition only to have the person released on PR bail no matter how many times they fail to appear and have to be extradited.

At no point in any hearing in either the Senate Judiciary or House Criminal Justice and Public Safety Committees did proponents say that no one would be held if they failed to appear. We supported it on the premise they could be held and "being set at affordable" would only apply to the poor not everyone. It should involve a determination of means just like a getting a court appointed attorney. The mantra given over and over again by proponents was about indigents and homeless should not be jailed due to poverty or homelessness. Instead everyone is getting a pass as there is no means test for bail like there is for a public defender.

What was the point of the meetings and listening to public input if it is ignored? If committee members had any concern about victims especially the elderly and taxpayers they would address the need for changes on failure to appear.

We need to make recommendations to solve the problems we already are seeing and easy to solve not go on quixotic diversions. Otherwise it is a waste of our time.

Chief Andrew Shagoury
Tuftonboro Police Department
PO Box 98, 240 Middle Road
Center Tuftonboro, NH 03816
Phone: 603-569-8695
Fax: 603-569-8642

President 2017-2018



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From: Renny Cushing [<mailto:reprennycushing@gmail.com>]

Sent: Tuesday, October 30, 2018 2:28 PM

To: Renny.Cushing@leg.state.nh.us

Cc: Feltes, Dan; Dan Feltes; Hopper, Gary; Jessica Bourque; repdawelch@hotmail.com; David Welch; James Vara; Tina Nadeau; Edwin Kelly; Buzz Scherr; Andrew Shagoury; mmorrison@londonderrynhpd.org; David Welch; bailnu@yahoo.com; lsaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety; Randy Hawks

Subject: Re: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Colleagues,

Passing along a link to a report by the National Conference of State Legislatures NCSL that might be of interest.

Renny

http://www.ncsl.org/portals/1/HTML_LargeReports/Mental_Health_Report_32598.pdf

Best,

Renny

Representative Robert Renny Cushing
Criminal Justice and Public Safety Committee
New Hampshire House of Representatives
State House
Concord, New Hampshire 03301
603 271 2136

Home:

395 Winnacunnet Road
Hampton, NH 03842
617 930 5196 (cell)
@rennycushing

Bourque, Jessica

From: Lara Saffo <lsaffo@co.grafton.nh.us>
Sent: Tuesday, October 30, 2018 9:13 PM
To: 'Andy Shagoury'; Cushing, Renny; Cushing, Renny; 'Elizabeth C. Sargent'; 'Chief David B. Goldstein'; 'Mark Chase'; 'External Pat Conway'; 'Lyn Schollett'; 'Attorney General'
Cc: Feltes, Dan; 'Dan Feltes'; Hopper, Gary; Bourque, Jessica; repdawelch@hotmail.com; Welch, David; 'James Vara'; 'Tina Nadeau'; 'Edwin Kelly'; 'Buzz Scherr'; mmorrison@londonderrynhpd.org; 'David Welch'; bailnu@yahoo.com; ~House Criminal Justice and Public Safety; 'Randy Hawks'
Subject: RE: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

In addition, when people fail to appear we cannot apply the principles of Early Case Resolution. Early case resolution requires accountability close in time to the conduct, not close in time to when they finally appear in court. We have all spent a lot of resources learning about ECR and trying to apply it in practice. But losing the ability to communicate with defendants close in time to the conduct means ECR will not work, another unintended consequence of this legislation. I will pull the data from Grafton's program where it called the number provided to bail commissioners to remind defendant's about their arraignment. Thank you everyone for your hard work and dedication. Lara

From: Andy Shagoury [mailto:tboropd@worldpath.net]
Sent: Tuesday, October 30, 2018 8:03 PM
To: 'Renny Cushing' <reprennycushing@gmail.com>; renny.cushing@leg.state.nh.us; Elizabeth C. Sargent <esargent@sheehan.com>; Chief David B. Goldstein <dgoldstein@franklinnh.org>; Mark Chase <mchasehpd@metrocast.net>; External Pat Conway <pconway@rcao.net>; Lyn Schollett <lyn@nhcadsv.org>; Attorney General <gordon.macdonald@doj.nh.gov>
Cc: 'Feltes, Dan' <dan.feltes@leg.state.nh.us>; 'Dan Feltes' <danfeltes@gmail.com>; 'Hopper, Gary' <gary.hopper@leg.state.nh.us>; 'Jessica Bourque' <jessica.bourque@leg.state.nh.us>; 'repdawelch@hotmail.com' <repdawelch@hotmail.com>; 'David Welch' <v-chcj@outlook.com>; 'James Vara' <james.vara@doj.nh.gov>; 'Tina Nadeau' <tnadeau@courts.state.nh.us>; 'Edwin Kelly' <ekelly@courts.state.nh.us>; 'Buzz Scherr' <albert.scherr@law.unh.edu>; mmorrison@londonderrynhpd.org; 'David Welch' <welch4016@outlook.com>; bailnu@yahoo.com; lsaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety' <housecriminaljusticeandpublicsafety@leg.state.nh.us>; 'Randy Hawks' <rhawkes@nhpd.org>
Subject: RE: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

While interesting, it seems pointless to do a deep dive on such a complex issue as mental health and the criminal justice system when something relatively simple, easy to fix, and clearly a problem from the ample input we have already received is not addressed. I am talking about the issue of failures to appear. We don't need to study it further. We already had plenty of testimony. We heard from multiple people about the issue of how the changes in the law has made it worse. Yet we can't even get a simple fix for that problem addressed. Clearly if the courts can't agree on the form to use for the law, it lacks clarity and needs to be fixed.

I repeat what I said, this was not what we were told was supposed to happen. As it stands today, what is the point of giving the court money for text messaging if there is no consequence for failing to appear? What about the elderly who are victims of fraud or other non-violent crime? All a defendant has to do since this passed is fail to appear and stall it until the victim cannot testify to get away with it. Meanwhile the victim is deprived of resources they may need to live while awaiting a resolution that may never come. What about taxpayers who pay for an extradition only to have the person released on PR bail no matter how many times they fail to appear and have to be extradited.

At no point in any hearing in either the Senate Judiciary or House Criminal Justice and Public Safety Committees did proponents say that no one would be held if they failed to appear. We supported it on the premise they could be held and "being set at affordable" would only apply to the poor not everyone. It should involve a determination of means just like a getting a court appointed attorney. The mantra given over and over again by proponents was about indigents and homeless should not be jailed due to poverty or homelessness. Instead everyone is getting a pass as there is no means test for bail like there is for a public defender.

What was the point of the meetings and listening to public input if it is ignored? If committee members had any concern about victims especially the elderly and taxpayers they would address the need for changes on failure to appear.

We need to make recommendations to solve the problems we already are seeing and easy to solve not go on quixotic diversions. Otherwise it is a waste of our time.

Chief Andrew Shagoury
Tuftonboro Police Department
PO Box 98, 240 Middle Road
Center Tuftonboro, NH 03816
Phone: 603-569-8695
Fax: 603-569-8642

President 2017-2018



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From: Renny Cushing [<mailto:reprennycushing@gmail.com>]

Sent: Tuesday, October 30, 2018 2:28 PM

To: Renny.Cushing@leg.state.nh.us

Cc: Feltes, Dan; Dan Feltes; Hopper, Gary; Jessica Bourque; repdawelch@hotmail.com; David Welch; James Vara; Tina Nadeau; Edwin Kelly; Buzz Scherr; Andrew Shagoury; mmorrison@londonderrynhpd.org; David Welch; bailnu@yahoo.com; lsaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety; Randy Hawks

Subject: Re: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Colleagues,

Passing along a link to a report by the National Conference of State Legislatures NCSL that might be of interest.

Renny

http://www.ncsl.org/portals/1/HTML_LargeReports/Mental_Health_Report_32598.pdf

Best,

Renny
Representative Robert Renny Cushing
Criminal Justice and Public Safety Committee
New Hampshire House of Representatives
State House
Concord, New Hampshire 03301
603 271 2136

Home:
395 Winnacunnet Road
Hampton, NH 03842
617 930 5196 (cell)
@rennycushing

Bourque, Jessica

From: Andrew Shagoury <tboropd@worldpath.net>
Sent: Wednesday, October 31, 2018 11:07 PM
To: Feltes, Dan
Cc: Cushing, Renny; Cushing, Renny; Elizabeth C. Sargent; Chief David B. Goldstein; Mark Chase; External Pat Conway; Lyn Schollett; Attorney General; Dan Feltes; Hopper, Gary; Bourque, Jessica; repdawelch@hotmail.com; Welch, David; James Vara; Tina Nadeau; Edwin Kelly; Buzz Scherr; mmorrison@londonderrynhpd.org; David Welch; bailnu@yahoo.com; Isaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety; Randy Hawks
Subject: Re: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

So when was the fact the failures to appear would not be held mentioned at any of the committee meetings?

President
New Hampshire Chiefs of Police
Sent from my iPhone

On Oct 31, 2018, at 7:52 PM, Feltes, Dan <Dan.Feltes@leg.state.nh.us> wrote:

As Chair, this is a reminder a baseline level of decorum and mutual respect is expected. The suggestion that misrepresentations were made or that commission members, because of how they voted on a certain proposal, don't care about the elderly or victims is not accurate, appropriate, or productive. Let's continue with a debate and discussion on the merits of the issues without questioning one another's motives or intent. Thank you.

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To: Cushing, Renny; Cushing, Renny; Elizabeth C. Sargent; Chief David B. Goldstein; Mark Chase; External Pat Conway; Lyn Schollett; Attorney General
Cc: Feltes, Dan; 'Dan Feltes'; Hopper, Gary; Bourque, Jessica; 'repdawelch@hotmail.com'; Welch, David; 'James Vara'; 'Tina Nadeau'; 'Edwin Kelly'; 'Buzz Scherr'; mmorrison@londonderrynhpd.org; 'David Welch'; bailnu@yahoo.com; Isaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety; 'Randy Hawks'
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President 2017-2018

<image001.png><image002.png>

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From: Renny Cushing [<mailto:reprennycushing@gmail.com>]

Sent: Tuesday, October 30, 2018 2:28 PM

To: Renny.Cushing@leg.state.nh.us

Cc: Feltes, Dan; Dan Feltes; Hopper, Gary; Jessica Bourque; repdawelch@hotmail.com; David Welch; James Vara; Tina Nadeau; Edwin Kelly; Buzz Scherr; Andrew Shagoury; mmorrison@londonderrynhpd.org; David Welch; bailnu@yahoo.com; lsaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety; Randy Hawks

Subject: Re: COMMISSION ON PRETRIAL DETENTION; PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Colleagues,

Passing along a link to a report by the National Conference of State Legislatures NCSL that might be of interest.

Renny

Best,

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Criminal Justice and Public Safety Committee
New Hampshire House of Representatives
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Bourque, Jessica

From: Andrew Shagoury <tboropd@worldpath.net>
Sent: Wednesday, October 31, 2018 11:41 PM
To: Feltes, Dan
Cc: Cushing, Renny; Cushing, Renny; Elizabeth C. Sargent; Chief David B. Goldstein; Mark Chase; External Pat Conway; Lyn Schollett; Attorney General; Dan Feltes; Hopper, Gary; Bourque, Jessica; repdawelch@hotmail.com; Welch, David; James Vara; Tina Nadeau; Edwin Kelly; Buzz Scherr; mmorrison@londonderrynhpd.org; David Welch; bailnu@yahoo.com; lsaffo@co.grafton.nh.us; ~House Criminal Justice and Public Safety; Randy Hawks
Subject: Re: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

When we talked as this was going forward you led me to believe they could be held. During this commission we received input from numerous people that it was an very real issue. Was it an unintended consequence that should be fixed or not? If you knew this was what was intended why didn't you correct me when we talked? And to where we are now, what is your plan to tell the family of an elderly victim of this very real possibility? What is your plan to fix this problem from your bill? I understand that unforeseen consequences can arise from a bill if that happens you fix it.

Was the fact that NO ONE would be held for failing to appear an unintended consequence or not?

Why do the courts have different forms for the same law? We heard the judges say there are different opinions on the law. Is that okay? Was that intended?

I think these are fundamental questions we need to answer before we tackle substance abuse and mental health.

President
New Hampshire Chiefs of Police
Sent from my iPhone

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President 2017-2018
<image001.png><image002.png>

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Criminal Justice and Public Safety; Randy Hawks

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Renny

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Best,

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Home:

395 Winnacunnet Road
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617 930 5196 (cell)
@rennycushing

Bourque, Jessica

From: Bourque, Jessica
Sent: Friday, November 09, 2018 12:06 PM
To: Hopper, Gary; Repdawelch@hotmail.com; Welch, David; Cushing, Renny; Cushing, Renny; james.vara@doj.nh.gov; tnadeau@courts.state.nh.us; EKelly@courts.state.nh.us; albert.scherr@law.unh.edu; rhawkes@nhpd.org; tboropd@worldpath.net; mmorrison@londonderrynhpd.org; welch4016@outlook.com; bailnu@yahoo.com
Cc: Dan Feltes; Feltes, Dan
Subject: COMMISSION ON PRETRIAL DETENTION, PRETRIAL SCHEDULING, AND PRETRIAL SERVICES

Commission Members,

This is just a reminder that the Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services will meet this Tuesday, November 13th at 1:00 pm in Room 307 of the Legislative Office Building. An agenda and minutes of the last meeting will be forthcoming. Please feel free to contact me if you have any questions. Enjoy your weekend!

Jessica A. Bourque
NH State Senate
Administrative Assistant to:
Senator Kevin Cavanaugh, District 16
Senator Dan Feltes, District 15
Senator Martha Hennessey, District 5
Legislative Office Building
Room 5
Concord, NH 03301
(603) 271-3067