

HB 1597-FN - AS AMENDED BY THE SENATE

04/21/2022 1559s

05/05/2022 1918s

2022 SESSION

22-2769

05/04

HOUSE BILL

1597-FN

AN ACT

permitting arraignments for felonies and preliminary examinations to be heard in circuit court.

SPONSORS:

Rep. Gordon, Graf. 9; Rep. Steven Smith, Sull. 11; Rep. M. Smith, Straf. 6; Sen. Soucy, Dist 18

COMMITTEE:

Judiciary

ANALYSIS

This bill permits arraignments for felonies and preliminary examinations to be heard in circuit court.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT permitting arraignments for felonies and preliminary examinations to be heard in circuit court.

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

1 1 New Section; Circuit Court; District Division; Criminal Cases. Amend RSA 490-F by inserting
2 after section 3 the following new section:

3 490-F:3-a District Division; Criminal Cases. Notwithstanding the jurisdictional provisions of
4 RSA 592-B:1, the circuit court – district division shall have jurisdiction to arraign defendants
5 charged with felony offenses and to hold a preliminary examination to determine whether probable
6 cause exists to believe the offense was committed and the defendant committed the offense, and if so,
7 to be bound over to the superior court for further proceedings. The supreme court shall adopt such
8 rules as may be required to effect the purpose of this section.

9 2 Criminal Procedure in Superior Court; Jurisdiction. Amend RSA 592-B:1 to read as follows:
10 592-B:1 Jurisdiction. The superior court shall have ~~[exclusive]~~ jurisdiction over felony
11 complaints and misdemeanors and violation level charges that are directly related to those felonies.
12 The superior court shall also have jurisdiction over de novo appeals of class A misdemeanors
13 pursuant to RSA 599:1.

14 3 Criminal Procedure in Superior Court; Commencement of Criminal Proceeding. Amend RSA
15 592-B:3 to read as follows:

16 592-B:3 Commencement of Criminal Proceeding.

17 I. ***Unless otherwise provided for in law***, criminal proceedings in superior court shall be
18 commenced by ***the receipt of a complaint from the circuit court having found probable cause***
19 ***to bind over a defendant*** ~~[the filing of a complaint by the attorney general, county attorney or the~~
20 ~~county attorney's designee, or by indictment by the grand jury]~~. If a complaint is ***received from the***
21 ***circuit court or is*** filed, the accused shall subsequently be indicted by a grand jury or waive grand
22 jury indictment pursuant to RSA 601:2 for the case to proceed.

23 II. The complaint ~~[shall be addressed to the court and]~~ shall set forth by name or description
24 the party accused and the offense charged. The description of an accused may include an
25 identifiable ridge skin impression or a DNA profile. A complaint that contains only an identifiable
26 ridge skin impression or DNA profile, and that alleges one or more of the following offenses shall,
27 upon its filing, toll the applicable statute of limitations under RSA 625:8 for:

28 (a) Capital murder under RSA 630:1.

29 (b) First degree murder under RSA 630:1-a.

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- (c) Second degree murder under RSA 630:1-b.
- (d) Manslaughter under RSA 630:2.
- (e) Negligent homicide under RSA 630:3.
- (f) First degree assault under RSA 631:1.
- (g) Second degree assault under RSA 631:2.
- (h) Aggravated felonious sexual assault under RSA 632-A:2.
- (i) Felonious sexual assault under RSA 632-A:3.
- (j) Kidnapping under RSA 633:1.
- (k) Arson under RSA 634:1, I-III.
- (l) Robbery under RSA 636:1.

4 Preliminary Examinations; Adjournments. Amend RSA 596-A:1 to read as follows:

596-A:1 Adjournments. When an accused person is brought before a circuit court, upon a warrant or complaint, for trial ***or preliminary examination***, the proceedings may be adjourned for cause, from time to time, as shall be adjudged reasonable, and the accused may be detained in custody, or required to recognize, with or without sureties, for the accused's appearance, as the nature of the case may require.

5 Bail and Recognizances; When Requirable. Amend RSA 597:5 to read as follows:

597:5 When Requirable. Every court and justice may, when a person is accused of an offense in which said court or justice is authorized to receive bail, release said person on personal recognizance or require said person to recognize, with sureties, to appear at a future time before said court or justice or any other competent tribunal. ~~[Bail in felony cases is returnable only to the superior court.]~~

6 Waiving Indictment. Amend RSA 601:2 to read as follows:

601:2 Waiving Indictment. Any person who has been ***bound over or*** committed by a justice ***or circuit court under provisions of RSA 592-A:4-a or 592-A:6*** for trial in the superior court upon a complaint charging a crime not punishable by death, and who desires to waive indictment, ~~[shall notify the court]~~ ***may apply in writing to the superior court for prompt arraignment upon such complaint.*** Upon ~~[such notification, the attorney general or]~~ ***the filing of such a motion,*** the county attorney may, with the approval of the court, proceed against the defendant by complaint, and in such case the defendant shall be held to answer and the court shall have as full jurisdiction of the complaint as if an indictment had been found. The arraignment of the defendant shall be at such time as the court may designate. Every person when so committed ***or bound over*** upon such a complaint shall be notified by the court of his ***or her*** right to apply for waiver of indictment and prompt arraignment as aforesaid.

7 New Section; District Courts; Binding Over by Circuit Court District Division. Amend RSA 502-A by inserting after section 13 the following new section:

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1 502-A:13-a Binding Over by Circuit Court District Division. Each circuit court district division
2 shall have jurisdiction to commit to jail, or bind over with sufficient sureties to the superior court, all
3 persons charged with offenses exceeding its jurisdiction to try, and any directly related misdemeanor
4 or violation level offenses, committed in the circuit court district division in which the court is
5 located.

6 8 New Section; Jurisdiction and Procedure Generally; Binding Over by Justice. Amend RSA
7 592-A by inserting after section 4 the following new section:

8 592-A:4-a Binding Over by Justice. A justice of the circuit court district division may cause to be
9 apprehended and committed to jail or bound over with sufficient sureties to the superior court all
10 persons charged with offenses committed or triable in the county exceeding the justice's jurisdiction
11 to try and any directly related misdemeanor or violation level offenses.

12 9 New Sections; Preliminary Examinations. Amend RSA 596-A by inserting after section 7 the
13 following new sections:

14 596-A:8 Record. Every circuit court district division shall, upon motion made by an accused in a
15 preliminary examination for probable cause, at least 5 days before the date of hearing or any
16 adjournment thereof, provide a recording of all proceedings before said court at the expense of the
17 defendant, or, in the case of an indigent defendant, in accordance with the provisions of RSA 604-A.
18 Every circuit court, upon its own motion, may cause a written transcript to be made of proceedings
19 at a preliminary examination in any case where the magnitude of the offense may seem to require it.

20 596-A:9 Caution to Accused. The circuit court district division shall cause the complaint to be
21 read to the accused and shall inform the accused of right to retain counsel and of the right to have a
22 preliminary examination. The court shall also inform the accused that they are not required to
23 make a statement or to testify, but that any statement or testimony given by the accused may be
24 used against them. The court shall allow accused reasonable time and opportunity to consult,
25 including an adjournment as provided in RSA 596-A:1, if necessary.

26 596-A:10 Procedure. The accused shall not be called upon to plead, if the offense is beyond the
27 jurisdiction of the court to decide. If the accused waives preliminary examination thereof, the court
28 shall hold the accused to appear in superior court as provided in RSA 596-A:13. If the accused does
29 not waive preliminary examination, the court shall hear the evidence within a reasonable time. The
30 accused may cross-examine the witnesses against them and may introduce evidence in their own
31 behalf.

32 596-A:11 Testimony of Accused. If the accused elects to be examined himself or herself, the
33 accused shall be sworn, but it shall always be a sufficient answer that he or she declines to answer
34 the question; and if at any time the accused declines to answer further, the examination shall cease.

35 596-A:12 Excluding Witnesses. Any of the witnesses for or against the accused may be excluded
36 from the place of examination, and be kept separate and apart from each other during the
37 examination of other witnesses.

596-A:13 Commitment and Bail. If from the evidence it appears to the circuit court district division that there is probable cause to believe that an offense has been committed which is beyond the jurisdiction of the court to try and that the accused committed it, or if the accused waives preliminary examination thereof, the court shall hold the accused to appear in superior court as provided in RSA 502-A:13-a or RSA 592-A:4-a; otherwise, if no probable cause appears, the accused shall be discharged from custody. If bound over, unless the offense is bailable only by the superior court as provided in RSA 597:4, the accused may be admitted to bail by the court as provided in RSA 597, but where the offense is bailable only by the superior court, the accused shall be committed by warrant to a county jail pending further proceedings in superior court.

10 New Section; Bail and Recognizances; Appearance at Superior Court. Amend RSA 597 by inserting after section 6-e the following new section:

597:6-f Appearance at Superior Court. If the offense is bailable by the circuit court district division, the accused shall be ordered to recognize in accordance with the provisions of RSA 597:2, for the accused's appearance at the superior court, at the next term thereof for the county or judicial district thereof at which a grand jury is required to attend, and to stand committed until the order is complied with.

11 New Section; Bail and Recognizances; Copies, Binding Over. Amend RSA 597 by inserting after section 11 the following new section:

597:11-a Copies, Binding Over. In the case of an order to recognize for appearance before the superior court, the circuit court shall cause copies of the complaint, other process, records and recognizances, together with any cash bail in the case, to be mailed or delivered to the clerk of the superior court of the county or judicial district thereof within 10 days after the date of such order for recognizance. A copy of the complaint or other process shall also be mailed or delivered to the county attorney for the county within said 10 days.

12 New Section; Rights of Accused; Discovery in Criminal Matters. Amend RSA 604 by inserting after section 1-a the following new section:

604:1-b Discovery in Criminal Matters. After an accused person has been bound over to the superior court and prior to indictment, the accused person shall have the same rights to discovery and deposition as he or she has subsequent to indictment, provided that all judicial proceedings with respect thereto shall be within the jurisdiction of the superior court, and notice of complaint therefor and hearing thereon shall be given to the county attorney, or the attorney general if the attorney general shall have entered the case.

13 Repeal. The following are repealed:

I. RSA 592-B:2, relative to implementation of the felonies first project.

II. RSA 592-B:6, relative to discovery in criminal cases.

III. RSA 592-B:7, relative to probable cause in criminal cases.

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

HB 1597-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2022-1918s)

AN ACT permitting arraignments for felonies and preliminary examinations to be heard in circuit court.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	Indeterminable Increase	Indeterminable Increase
Funding Source:	☒ General	☐ Education	☐ Highway	☐ Other

METHODOLOGY:

The Judicial Branch states this bill would give the Circuit Court, District Division, jurisdiction to arraign defendants charged with felony offenses, to hold a preliminary examination to determine whether probable cause exists to believe the offense was committed and the defendant committed the offense, and if so, to be bound over to the superior court for further proceedings. The bill provides that the jurisdiction of the Circuit Court would be notwithstanding RSA 592-B:1, which gives the Superior Court exclusive jurisdiction over felony complaints. The Branch assumes felony arraignments would be conducted in most cases in the Circuit Courts if this bill were to pass. In 2019, there were 8,766 felonies filed, the majority of which were filed in Superior Court. Once this bill is enacted, virtually all felonies would be initiated in Circuit Court. The Branch assumes the majority of these would be scheduled in the four busiest District Division courts – Concord, Manchester, Nashua and Rochester. The Judicial Branch assumes an Administrative Court Assistant would be needed in each of those courts to manage the additional caseload as well as manage the hand off between Circuit Court and Superior Court after the felony Circuit Court arraignments. While additional judicial resources would also likely be necessary, the Branch is unable to determine the fiscal impact as it cannot determine whether, where or how many new judges would be required. The Superior Court now e-files criminal cases. The Circuit Court would need additional resources in terms of positions and scanning equipment in each courthouse in order to convert paper filings to electronic documents. In addition, by having arraignments in Circuit Court, there is an impact to the Domestic Violence Registry. In the past five years, courts have issued between 3,000 – 4,000 criminal bail protective orders which are recorded by the Registry. Each time a file is transferred to a new

court location changes (such as when a felony that starts in Circuit Court is bound over to Superior Court), the Registry is required to update the database. In addition, for each such transfer, bail conditions are subject to review and modification, and each such modification would require an update with the Registry. Once in Superior Court, there may be a further modifications, such as to nol pros in Superior Court and refile as a misdemeanor in Circuit Court, or downgrade the felony to a misdemeanor in Superior Court, and each such modification would necessitate an additional Registry update.

Though the Judicial Branch could see a reduction in Superior Court resources on felony arraignments resulting from the proposed move of hearing felony arraignments in Circuit Court, the Branch does not believe any such offsets would be significant, if they exist at all. While most initial arraignments would move from Superior to Circuit Court, those felony cases that do not result in a plea in the Circuit Court would be bound over to the Superior Court after the probable cause hearing. In addition, all Circuit Court bail decisions can be appealed to the Superior Court. If there any savings in Superior Court, existing Superior Court caseloads would more than absorb such savings.

The Branch states although the fiscal impact of this bill is indeterminable, it is potentially significant. The Branch believes Administrative Court Assistant positions would be needed in each of the four District Division courts with the busiest criminal dockets. The Domestic Violence Registry would also need to convert two part-time DV Registry Assistants to full time positions in order to handle the additional filings that would result from multiple transfers between Circuit and Superior Courts.

Position	FY2024 Salaries & Benefits Per Employee	Total FY 2024	FY2025 Salaries & Benefits Per Employee	Total FY 2025
Administrative Court Assistant (4)	\$84,833	\$339,332	\$89,130	\$356,520
DV F/T Registry (2)	\$40,014	\$80,028	\$41,984	\$83,968
(Less P/T DV Registry (2))	\$29,344	(\$58,688)	\$30,788	(\$61,576)

Additional judicial resources would also likely also be necessary, the Judicial Branch is unable to determine whether, where or how many new judges or other resources would be required. The Circuit Court would also need additional resources in terms of positions and scanning equipment in each courthouse in order to convert paper filings and file them to Superior Court. The fiscal impact of the additional equipment and positions to perform this role is indeterminable at this time.

AGENCIES CONTACTED:

Judicial Branch