

Sen. Hennessey, Dist 5
Sen. Carson, Dist 14
Sen. French, Dist 7
June 5, 2020
2020-1380s
04/11

Amendment to HB 1645-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to superior court judgments, bail commissioners, prison privatization,
4 misdemeanor domestic violence offenses, immunity from arrest or prosecution for
5 certain alcoholic beverage violations, police officers reporting misconduct, and
6 criminal mischief.
7

8 Amend the bill by replacing all after the enacting clause with the following:

9

10 1 Annulment of Criminal Records. Amend RSA 651:5, III(b)(2)(h) is repealed and reenacted to
11 read as follows:

12 (h) For any misdemeanor domestic violence offense under RSA 631:2-b, 10 years. In the
13 event an individual is convicted of a subsequent misdemeanor or felony domestic violence offense
14 under RSA 631:2-b, the earlier domestic violence conviction shall not eligible for an annulment until
15 the most recent domestic violence conviction has become eligible for an annulment.

16 2 Equitable Damages in Superior Court. Amend RSA 491:8 to read as follows:

17 491:8 Actions Against State. The superior court shall have jurisdiction to enter judgment
18 against the state of New Hampshire founded upon any express or implied contract with the state,
19 **including specific performance and other equitable remedies that are not limited to money**
20 **damages.** Any action brought under this section shall be instituted by bill of complaint and shall be
21 tried by the court without a jury. The jurisdiction conferred upon the superior court by this section
22 includes any set-off, claim or demand whatever on the part of the state against any plaintiff
23 commencing an action under this section. The attorney general, upon the presentation of a claim
24 founded upon a judgment against the state, shall submit the claim to the department or agency
25 which entered into the contract, and said department or agency shall manifest said claim for
26 payment from the appropriation under which the contract was entered into; provided, that if there is
27 not sufficient balance in said appropriation, the attorney general shall present said claim to the
28 general court for the requisite appropriation.

29 3 Applicability. RSA 491:8 as amended by this section 2 of this act shall apply to express or
30 implied contracts with the state that are in effect on or after the effective date of section 2 of this act.

31 4 New Subparagraph; Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial
32 Services. Amend RSA 597:43, I by inserting after subparagraph (l) the following new subparagraph:

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1 (m) A bail commissioner, appointed by the governor.

2 5 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, III(g) to
3 read as follows:

4 (g) If the court determines by a preponderance of the evidence that a person has failed to
5 appear ***without a reasonable explanation*** on any [~~previous~~] matter charged as a felony, class A
6 misdemeanor, or driving or operating while impaired, or a reasonably equivalent offense in an out-
7 of-state jurisdiction, 3 or more times within the past 5 years, there shall be a rebuttable presumption
8 that release will not reasonably assure the appearance of the person as required.

9 6 Legislative Findings. The general court hereby finds and declares that:

10 I. The management and operation of a correctional facility involves functions that are
11 inherently governmental. The imposition of punishment on errant citizens through incarceration
12 requires state, county, and local governments to exercise their coercive police powers over
13 individuals and is thus distinguishable from privatization in other areas of government.

14 II. Issues of liability, accountability, and cost warrant a prohibition of the ownership,
15 operation, or management of correctional facilities by for-profit private contractors.

16 7 Department of Corrections; Powers and Duties of Commissioner. Amend RSA 21-H:8, VI-VII
17 to read as follows:

18 VI. The commissioner may enter into contracts with the state's counties, the governments of
19 other states, [~~and~~] the federal government, [~~and~~] ***or other*** appropriate [~~private~~] ***government***
20 agencies or facilities and make proper and necessary arrangements with them for the transfer and
21 reception of inmates and allow transfers to state prisons of any person. Any person who is confined
22 awaiting trial on a felony charge may be transferred to the state prison from the county correctional
23 facility, upon the recommendation of the superintendent of the county department of corrections, and
24 with the approval of the county commissioners of said county. The superintendent may transfer a
25 prisoner, without the approval of the county commissioners, if the superintendent determines the
26 transfer is necessary for public safety or emergency reasons. The county commissioners shall review
27 any such transfer at their next regular meeting. If the county commissioners reject the transfer, the
28 prisoner shall be returned to the facility from which the prisoner came as soon as practicable.

29 VII.(a) The commissioner may order the assignment and transfer of persons committed to
30 his ***or her*** custody to correctional facilities of the department or ***correctional facilities operated***
31 ***by state governments in other jurisdictions, or public*** facilities under contract with the
32 department. ***The commissioner shall not enter into a contract with a private or for-profit***
33 ***entity for the sole purpose of housing state prisoners.***

34 (b) ***Notwithstanding subparagraph (a), if the governor, upon recommendation***
35 ***of the commissioner, declares by executive order that a corrections emergency exists that***
36 ***requires the commissioner to enter into a temporary contract with a private or for-profit***
37 ***entity to secure provisional housing for displaced prisoners, the commissioner may enter***

1 *into such a contract, pending approval of the governor and the council. Temporary*
2 *contracts entered into under this section shall not permanently or indefinitely replace a*
3 *correctional facility operated by the state of New Hampshire or a contract with another*
4 *publicly-operated facility.*

5 8 New Paragraph; County Departments of Corrections; Policies, Rules and Regulations. Amend
6 RSA 30-B:6 by inserting after paragraph II the following new paragraph:

7 III.(a) No county department of corrections shall enter into a contract with a private or for-
8 profit entity for the sole purpose of housing county prisoners. Nothing in this paragraph shall
9 prohibit a county department of corrections from contracting for select services that are provided
10 inside of a county correctional facility.

11 (b) Notwithstanding subparagraph (a), if the county commissioners declare that a
12 corrections emergency exists that requires the superintendent to enter into a temporary contract
13 with a private or for-profit entity to secure provisional housing for displaced prisoners, the
14 superintendent may enter into such a contract, pending approval of the county commissioners.
15 Temporary contracts entered into under this section shall not permanently or indefinitely replace a
16 county correctional facility or a contract with another publicly-operated facility.

17 9 Applicability. Sections 7-8 of this act shall not apply to a contract entered into prior to the
18 effective date of sections 7-8 of this act by the commissioner of the department of corrections or a
19 county department of corrections with a private entity for the housing of prisoners. Upon the
20 expiration of any such contract, the commissioner or the county shall transfer housing of such
21 prisoners to a state correctional facility operated by the state of New Hampshire or another state
22 government, or a federal correctional facility operated by the federal government, or a county
23 correctional facility operated by a county. Sections 7-8 of this act shall not apply to contracts for
24 goods and services which are ancillary to the housing of prisoners such as medical or educational
25 services, or repair and maintenance contracts.

26 10 New Section; Bail and Recognizances; Determination of Indigence and Payment of Bail
27 Commissioner Fee. Amend RSA 597 by inserting after section 2-a the following new section:

28 597:2-b Determination of Indigence and Payment of Bail Commissioner Fee.

29 I. The arresting officer, at the point of arrest, shall inform the offender of the availability of
30 the services of the bail commissioner. If the offender elects to utilize the bail commissioner's services
31 and is not indigent, the offender shall pay the bail commissioner's fee directly to the bail
32 commissioner. If the offender elects to utilize the services of the bail commissioner, but claims
33 indigence, the court shall, to the extent of available funding, utilize all possible means to pay the bail
34 commissioner's fee, and shall include written evidence of fee payment in the offender's case file.

35 II. The court shall develop uniform criteria to evaluate and determine whether an offender
36 is indigent or not indigent for the purpose of the offender's ability to pay the bail commissioner's fee.

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1 Based on the criteria, the court shall render a finding of indigent or not indigent for the purpose of
2 the offender's ability to pay the bail commissioner's fee.

3 III. If the court finds that the offender is not indigent for the purpose of paying the bail
4 commissioner's fee, the offender shall reimburse the court for payment of the bail commissioner's fee.

5 IV. If the court finds that the offender is indigent for the purpose of paying the bail
6 commissioner's fee, the offender shall not be liable to pay the fee.

7 11 Bail and Recognizances; Term. Amend RSA 597:17 to read as follows:

8 597:17 Term ***and Identification Card.***

9 I. Bail commissioners shall be commissioned for 5 years and continue in office until their
10 successors shall have qualified.

11 II. ***The administrative judge of the superior court or the circuit court shall issue an***
12 ***identification card to each qualified bail commissioner in the state.***

13 12 Bail Commissioners; Educational Requirements for Bail Commissioners. Amend RSA
14 597:18-a to read as follows:

15 597:18-a Educational Requirements for Bail Commissioners.

16 I. During September or October of each year [~~beginning in 1995~~], a justice of [~~each district or~~
17 ~~municipal~~] ***the superior*** court, under the direction of the administrative judge of the [~~district and~~
18 ~~municipal courts~~] ***superior court, and a justice from the circuit court, under the direction of***
19 ***the administrative judge of the circuit court,*** shall hold a meeting with all bail commissioners
20 under the jurisdiction of such [~~court~~] ***courts.*** This meeting shall be for the purpose of educating bail
21 commissioners on the laws concerning their powers and duties.

22 II. ***The administrative judges of the superior and circuit courts shall jointly develop***
23 ***an education program to ensure that bail commissioners have current information***
24 ***regarding the status of the laws affecting bail commissioners and the powers and duties of***
25 ***bail commissioners.***

26 III. A copy of all laws concerning bail commissioners and a copy of the latest edition of the
27 Bail Commissioner's Handbook shall be provided to each bail commissioner at this annual meeting.

28 13 Study Committee; Establishing a Pilot Program for Remote Access to Bail Commissioner's
29 Services.

30 I. There is established a committee to study establishing a pilot program for remote access
31 to bail commissioner's services.

32 II. The members of the committee shall be as follows:

33 (a) Three members of the house of representatives, 2 of whom shall be from the judiciary
34 committee, appointed by the speaker of the house of representatives.

35 (b) Two members of the senate, one of whom shall be from the judiciary committee,
36 appointed by the president of the senate.

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1 III. Members of the committee shall receive mileage at the legislative rate when attending
2 to the duties of the committee.

3 IV. The committee shall study the feasibility of establishing a pilot program to allow remote
4 access to a bail commissioner's services.

5 V. The members of the study committee shall elect a chairperson from among the members.
6 The first meeting of the committee shall be called by the first-named house member. The first
7 meeting of the committee shall be held within 45 days of the effective date of this section. Three
8 members of the committee shall constitute a quorum.

9 VI. The committee shall report its findings and any recommendations for proposed
10 legislation to the speaker of the house of representatives, the president of the senate, the house
11 clerk, the senate clerk, the governor, and the state library on or before November 1, 2020.

12 14 New Section; Alcoholic Beverages; Enforcement, Requirements, and Penalties. Amend RSA
13 179 by inserting after section 63 the following new section:

14 179:64 Immunity From Liability.

15 I.(a) No person under 21 years of age shall be arrested or prosecuted for an offense under
16 this chapter if such person, in good faith and in a timely manner, requests medical or emergency
17 treatment for himself, herself, or another person in a situation that involves risk of overdose to
18 himself, herself, or another person under 21 years of age from the consumption of alcohol including
19 but not limited to extreme physical illness, decreased level of consciousness, respiratory depression,
20 coma, mania, or death from the consumption of alcohol.

21 (b) No person under 21 years of age shall be arrested or prosecuted for an offense under
22 this chapter if such person was the individual for whom medical or emergency treatment or
23 assistance was sought and the evidence of an offense under this chapter is obtained as a result of
24 another person contacting emergency medical services or law enforcement.

25 II. This section shall not be a defense to a charge of or prosecution for driving or operating
26 under the influence of alcohol pursuant to RSA 265-A.

27 15 New Subdivision; Reports of Misconduct by Law Enforcement Officers. Amend RSA 105 by
28 inserting after section 18 the following new subdivision:

29 Reports of Misconduct by Law Enforcement Officers

30 105:19 Reports of Misconduct by Law Enforcement Officers.

31 I. For the purposes of this section, "misconduct" means assault, sexual assault, bribery,
32 fraud, theft, tampering with evidence, tampering with a witness, or excessive or illegal use of force.

33 II. It shall be the duty of any law enforcement officer who observes misconduct by another
34 law enforcement officer to notify the chief law enforcement officer in his or her department in
35 writing within 7 days of observing such misconduct. Within 7 days of receiving such notification, the
36 chief law enforcement officer shall notify the police standards and training council of such

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misconduct in writing. If the chief law enforcement officer is the subject of the misconduct report, the reporting officer shall report directly to the police standards and training council.

III. No discriminatory, disciplinary, or retaliatory action shall be taken against any officer by any employee of a law enforcement agency for any information given or disclosed by him or her in good faith in the course of making a report of misconduct under paragraph II.

IV. After 6 months from the filing of the report of misconduct with the police standards and training council, any records pertaining to the council's investigation may be made available to the public pursuant to RSA 91-A.

16 Destruction of Property; Criminal Mischief. Amend RSA 634:2, I to read as follows:

I. A person is guilty of criminal mischief who, having no right to do so nor any reasonable basis for belief of having such a right, purposely or recklessly damages *the* property of another, ***or who causes permanent or temporary damage to public property including vandalism, defacement, destruction, covering, tampering with, or any other unauthorized alteration to public property.***

17 New Paragraph; Destruction of Property; Criminal Mischief. Amend RSA 634:2 by inserting after paragraph IV the following new paragraph:

IV-a. As used in this section, "public property" means any property that is not privately owned, including state or municipal property, or statues, monuments, or natural geological formations, sites, or rock surfaces located on public property that have been designated by the state or one of its political subdivisions or the federal government as a natural area or landmark.

18 Destruction of Property; Criminal Mischief. Amend RSA 634:2, VI to read as follows:

VI. Any person who is found guilty of criminal mischief under paragraph III of this section because he or she has vandalized, defaced, ~~[or] destroyed [any part of state or municipal property, or any natural geological formation, site, or rock surface located on public property that has been designated by the state or any of its political subdivisions or the federal government as a natural area or landmark]~~, ***covered, tampered with, or made any other unauthorized alteration, whether permanent or temporary, on public property,*** shall be guilty of a ~~[class A misdemeanor]~~ ***violation*** and shall also make restitution for any damage he or she has caused.

19 Effective Date.

I. Sections 15-18 of this act shall take effect January 1, 2021.

II. Sections 1, 4, 5, and 14 of this act shall take effect 60 days after its passage.

III. The remainder of this act shall take effect upon its passage.

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AMENDED ANALYSIS

This bill:

I. Amends the waiting period to petition for annulment of a misdemeanor domestic violence offense.

II. Allows the superior court to render equitable remedies in actions against the state.

III. Adds a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services and adds a provision for determining whether the court will order the release of a defendant pending trial.

IV. Prohibits the state or county department of corrections from transferring the housing of prisoners to a correctional facility operated by a private or for-profit entity, except when a corrections emergency exists.

V. As a result of the committee established in 2019, 87 (SB112), establishes a procedure to determine an offender's indigence for the purpose of financial ability to pay the bail commissioner's fee; requires the court to develop criteria for determining whether an offender is indigent; requires identification cards be issued to bail commissioners; requires the court to develop an education program for bail commissioners; and establishes a committee to study the feasibility of providing remote access to a bail commissioner's services.

VI. Provides immunity from arrest or prosecution for certain alcoholic beverage violations for a person under 21 years of age who contacts medical or emergency services as a result of an alcohol overdose.

VII. Requires law enforcement officers to report misconduct by other law enforcement officers.

VIII. Inserts a definition of public property into the criminal mischief statute.