

Amendment to HB 592-FN

1 Amend the bill by replacing section 3 with the following:

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3 3 Bail and Recognizances; Release of a Defendant Pending Trial. RSA 597:2 is repealed and
4 reenacted to read as follows:

5 597:2 Release of a Defendant Pending Trial.

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

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

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

13 (c) Detained; or

14 (d) Temporarily detained to permit revocation of conditional release pursuant to the
15 provisions of paragraph XII.

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

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

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

23 (c) Detained.

24 III.(a) A person may be detained for a period of not more than 36 hours from the time of his
25 or her arrest, excluding weekends and holidays. The court shall order the pre-arraignment or
26 pretrial release of the person on his or her personal recognizance, or upon execution of an unsecured
27 appearance bond in an amount specified by the court, or cash or corporate surety bail, subject to the
28 condition that the person not commit a crime during the period of his or her release, and subject to
29 such further condition or combination of conditions that the court may require unless the court
30 determines by a finding of probable cause that such release will not reasonably assure the
31 appearance of the person as required or will endanger the safety of the person or of any other person
32 or the community. The court may also consider as a factor in its determination under this

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1 paragraph or paragraph IV that a person who is detained as a result of his or her inability to meet
2 the required conditions or post the required bond is the parent and sole caretaker of a child and
3 whether, as a result, such child would become the responsibility of the division for children, youth,
4 and families.

5 (b) If there is probable cause to believe that, on this matter or while on release pending
6 resolution of a previous offense, the person: failed to appear; or committed a felony, class A
7 misdemeanor, or driving or operating while impaired; or violated a condition of bail; there shall be a
8 rebuttable presumption that the person will not abide by bail conditions, and the person shall be
9 detained. At the bail hearing, the defendant shall be permitted to present evidence and the court
10 shall decide whether such person has rebutted the presumption that release will not reasonably
11 assure the appearance of the person as required or comply with bail conditions.

12 (c) Except as provided in RSA 597:1-c, a person who is charged with homicide under RSA
13 630; first degree assault under RSA 631:1; second degree assault under RSA 631:2; felony level
14 domestic violence under RSA 631:2-b; aggravated felonious sexual assault under RSA 632-A:2;
15 felonious sexual assault under RSA 632-A:3; kidnapping under RSA 633:1; felony level stalking
16 under RSA 633:3-a, VI(a); trafficking in persons under RSA 633:7; robbery under RSA 636:1, III;
17 possession, manufacture, or distribution of child sexual abuse images under RSA 649-A; or computer
18 pornography and child exploitation under RSA 649-B; shall not be brought before a bail
19 commissioner and shall, upon arrest, be detained pending arraignment before the court.
20 Arraignment shall occur no later than 36 hours after the arrest, excluding weekends and holidays.
21 At the person's appearance before the court, the court shall order that the person be detained
22 pending trial if the court determines by a finding of probable cause that release of the person is a
23 danger to that person or the public. In determining whether release will endanger the safety of that
24 person or the public, the court may consider all relevant and material factors presented pursuant to
25 paragraph VI. If the court does not find probable cause that the person must be detained, the court
26 shall order the person released pursuant to subparagraph I(b), or, if applicable, temporarily detained
27 pursuant to subparagraph I(d). A person arrested for violating the conditions of his or her bail for an
28 offense listed in this subparagraph shall be held until they can be brought before the court at the
29 first available date. If at a subsequent hearing, the court finds probable cause exists that the person
30 violated the conditions of his or her bail for any of the crimes listed in this subparagraph, the
31 defendant shall be held pending trial.

32 IV. As applied to this section, the court shall not impose a financial condition that will result
33 in the pretrial detention of the person solely as a result of that financial condition unless the court
34 determines by a finding of probable cause after a hearing that no reasonable alternative or
35 combination of conditions will assure that the person will not commit a new offense, violate bail, or
36 fail to appear. The defendant shall be afforded the opportunity to be heard and the court may
37 consider any relevant factors in making its determination.

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1 V. In determining the amount of the unsecured appearance bond or cash or corporate surety
2 bail, the court may consider all relevant factors bearing upon a person's ability to post bail.

3 VI.(a) Evidence in support of preventive detention shall be made by offer of proof at the
4 initial appearance before the court. At that time, the defendant may request a subsequent bail
5 hearing where live testimony is presented to the court.

6 (b) At any subsequent hearing, such testimony may be presented via video conferencing,
7 unless the court determines that witness testimony in court is necessary. A request by the
8 defendant for in-court testimony shall be made by oral motion at the initial hearing or by written
9 motion prior to any subsequent hearing. Any order granting the defendant's request shall be
10 distributed to the parties at least 48 hours prior to any subsequent hearing.

11 (c) There shall be a rebuttable presumption that an alleged victim of the crime shall not
12 be required to testify at the bail hearing. Nothing in this section shall preclude an alleged victim
13 from voluntarily testifying at such hearing. The state may present evidence of statements made in
14 the course of an investigation through a law enforcement officer.

15 VII.(a) If the court determines that release described in paragraphs I and II will not
16 reasonably assure the appearance of the person as required or, as described in paragraph III or IX,
17 will endanger the safety of the person or of any other person or the community, the court shall issue
18 an order that includes the following conditions:

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

21 (2) Such further condition or combination of conditions that he determines will
22 reasonably assure the appearance of the person as required and the safety of the person or of any
23 other person or the community, which may include the condition that the person:

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

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

30 (C) Satisfy any other condition that is reasonably necessary to assure the
31 appearance of the person as required and to assure the safety of the person or of any other person or
32 the community.

33 (b) In considering the conditions of release described in subparagraph VII(a)(1) or
34 VII(a)(2), the court may upon its own motion, or shall upon the motion of the state, conduct an
35 inquiry into the source of the property to be designated for potential forfeiture or offered as collateral
36 to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that
37 because of its source will not reasonably assure the appearance of the person as required.

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

4 IX. If a person is charged with any of the offenses listed in RSA 173-B:1, I or charged with
5 violation of a protective order issued under RSA 458:16, III or after arraignment for violation of a
6 protective order under RSA 173-B, the court may order preventive detention without bail if there is
7 probable cause to believe that the person poses a danger to another, or, in the alternative, restrictive
8 conditions including but not limited to electronic monitoring and supervision. The court may
9 consider, but shall not be limited to considering, any of the following conduct as evidence of posing a
10 danger:

- 11 (a) Threats of suicide.
- 12 (b) Acute depression.
- 13 (c) History of violating protective orders.
- 14 (d) Possessing or attempting to possess a deadly weapon in violation of an order.
- 15 (e) Death threats or threats of possessiveness toward another.
- 16 (f) Stalking, as defined in RSA 633:3-a.
- 17 (g) Cruelty to or violence directed toward pets.

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

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

24 XI. In a release order issued pursuant to the provisions of this section, the court shall
25 include a written statement that sets forth:

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

29 XII. A person charged with an offense who is, and was at the time the offense was
30 committed, on probation or parole for any offense under federal or state law, except as provided in
31 RSA 597:1-d, III may be detained for a period of not more than 36 hours from the time of his or her
32 arrest, excluding weekends and holidays. The law enforcement agency making the arrest shall
33 notify the appropriate court, probation or parole official, or federal, state or local law enforcement
34 official. Upon such notice the court shall also direct the clerk to notify by telephone the division of
35 field services, department of corrections, of the pending bail hearing. If the official fails or declines
36 to take the person into custody during that period, the person shall be treated in accordance with the
37 provisions of law governing release pending trial. Probationers and parolees who are arrested and

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1 fail to advise their supervisory probation officer or parole officer in accordance with the conditions of
2 probations and parole may be subject to arrest and detention as probation and parole violators.

3 XIII. Notwithstanding any law to the contrary, upon the appearance of a person charged
4 with a class B misdemeanor, the court shall issue an order that, pending arraignment, the person be
5 released on his or her personal recognizance, unless the court determines that such release will
6 endanger the safety of the person or of any other person or the community. The court shall appoint
7 an attorney to represent any indigent person charged with a class B misdemeanor denied release for
8 the purpose of representing such person at any detention hearing.

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

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

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

14 XV.(a) Each county may develop criteria to evaluate and determine whether a person is
15 indigent or not for the purpose of the person's ability to repay the cost of electronic monitoring.
16 Based on the criteria, the county may render a finding of indigent or not for the purpose of the
17 person's ability to repay the costs of electronic monitoring.

18 (b) If the county finds that the person is not indigent for the purpose of repaying the cost
19 of electronic monitoring, the county may order that the person reimburse the county for payment of
20 the cost of electronic monitoring. The county may extend the time period for repayment in its
21 discretion to allow the person time to make the repayment, except that in no case shall the time
22 period exceed one year from the date the case was closed. The county may seek reimbursement in
23 other ways as determined by the county.

24 (c) If the county finds that the person is indigent for the purpose of repaying the cost of
25 electronic monitoring, the county may waive the cost of electronic monitoring.