

HB 592-FN - AS INTRODUCED

2025 SESSION

25-0795

09/11

HOUSE BILL **592-FN**

AN ACT relative to magistrates and the standards applicable to and the administration of bail.

SPONSORS: Rep. Berry, Hills. 44; Rep. Bordes, Belk. 5; Rep. Cole, Hills. 26; Rep. Kesselring, Hills. 18; Rep. Morton, Hills. 39

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill:

I. Makes various amendments governing the standards to and the administration of bail.

II. Repeals the establishment of magistrates and makes other amendments to reflect that repeal, including the repeal of an appropriation.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to magistrates and the standards applicable to and the administration of bail.

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

1 1 Judicial Training; Magistrates Removed. Amend RSA 490-K:1 through 490-K:3 to read as
2 follows:

3 490-K:1 Judicial Training Coordinator. A judicial training coordinator position shall be created
4 on or before July 1, 2025, to work under the direction of the chief justice of the supreme court. The
5 judicial training coordinator shall develop high quality judicial branch training and continuing
6 education programs and work to provide judges, [~~magistrates,~~] bail commissioners, administrators,
7 and court staff with a reasonable opportunity to fulfill any mandatory orientation and initial
8 required training as well as continuing educational requirements set by the chief justice of the
9 supreme court.

10 490-K:2 Initial Judicial Training Requirements. Any person who holds the position of judge [~~or~~
11 ~~magistrate~~] in this state, and all nonjudicial employees of the judicial branch with a hire date on or
12 after July 1, 2025, shall complete an orientation and training program within 3 months of hire, as
13 directed by the chief justice of the supreme court. The minimum initial training for judges may be as
14 follows:

15 I. Orientation for new judges on procedures and functions of the applicable court and
16 relevant procedural and substantive law;

17 II. Education for new judges on major legal subjects and practical skills needed by them and
18 appropriate to the jurisdiction of the court in which they serve;

19 III. At least one hour of training devoted to the topics of legal and judicial ethics,
20 professionalism, preventing implicit bias, mental health, and domestic violence.

21 490-K:3 Judicial Continuing Education Requirements. Any person who holds the position of
22 judge, [~~magistrate,~~] court administrator, clerk, or director of the administrative office of the court in
23 this state, shall be required to complete continuing education as the chief justice of the supreme
24 court directs.

25 2 Arrests in Criminal Cases; Place and Time of Detention. Amend RSA 594:20-a, I to read as
26 follows:

27 I. When a person is arrested with or without a warrant, he or she may be committed to a
28 county correctional facility, to a police station or other place provided for the detention of offenders,
29 or otherwise detained in custody. The person shall be taken to appear before a [~~magistrate,~~] circuit
30 court[~~s~~] or a superior court without unreasonable delay to answer for the offense. All persons shall

1 appear no later than 24 hours after arrest~~[, or no later than 36 hours after arrest if arrested between~~
2 ~~8:00 a.m. and 1:00 p.m. and the person's attorney is unable to attend an arraignment on the same~~
3 ~~day,] Saturdays, Sundays, and holidays excepted. [In the case of a person arrested when the court is~~
4 ~~not open within the next 24 hours, a decision on bail shall be made by a magistrate within 24 hours~~
5 ~~of the arrest for any of the crimes listed in RSA 597:2, III(a)(1). Hearings held by a magistrate~~
6 ~~pursuant to this section may be held telephonically, and the magistrate may conduct such hearing~~
7 ~~from any location within the state of New Hampshire, without regard to the jurisdiction in which the~~
8 ~~person was arrested. This section shall not be construed to prohibit telephonic hearings that are~~
9 ~~otherwise permitted by law or court rule].~~

10 3 Bail and Recognizances; Release of a Defendant Pending Trial. RSA 597:2 is repealed and
11 reenacted to read as follows:

12 597:2 Release of a Defendant Pending Trial.

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

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

18 (b) Released on a condition or combination of conditions pursuant to the provisions of
19 paragraph IV; or

20 (c) Temporarily detained to permit revocation of conditional release pursuant to the
21 provisions of paragraph IX.

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

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

27 (b) Released on a condition or combination of conditions pursuant to the provisions of
28 paragraph IV; or

29 (c) Detained.

30 III. The court or justice shall order the prearrestment or pretrial release of the person on
31 his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount
32 specified by the court, subject to the condition that the person not commit a crime during the period
33 of his or her release, and subject to such further condition or combination of conditions that the court
34 may require, unless the court determines that such release will not reasonably assure the
35 appearance of the person as required or will endanger the safety of the person or of any other person
36 or the community. The court may also consider as a factor in its determination under this
37 paragraph or paragraph IV that a person who is detained as a result of his or her inability to meet

1 the required conditions or post the required bond is the parent and sole caretaker of a child and
2 whether, as a result, such child would become the responsibility of the division of children, youth,
3 and families.

4 IV.(a) If the court or justice determines that the release described in paragraph III will not
5 reasonably assure the appearance of the person as required or, as described in paragraph III or X,
6 will endanger the safety of the person or of any other person or the community, the court shall issue
7 an order that includes the following conditions:

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

10 (2) Such further condition or combination of conditions that the court determines
11 will reasonably assure the appearance of the person as required and the safety of the person or of
12 any other person or the community, which may include the condition that the person:

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

17 (ii) Furnish bail for his appearance by recognizance with sufficient sureties
18 or by deposit of moneys equal to the amount of the bail required as the court or justice may direct;
19 and

20 (iii) Satisfy any other condition that is reasonably necessary to assure the
21 appearance of the person as required and to assure the safety of the person or of any other person or
22 the community.

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

28 V. If a person is charged with any of the offenses listed in RSA 173-B:1, I or charged with
29 violation of a protective order issued under RSA 458:16, III or after arraignment for violation of a
30 protective order under RSA 173-B, the court or justice may order preventive detention without bail,
31 or, in the alternative, restrictive conditions including but not limited to electronic monitoring and
32 supervision, if there is clear and convincing evidence that the person poses a danger to another. The
33 court or justice may consider, but shall not be limited to considering, any of the following conduct as
34 evidence of posing a danger:

35 (a) Threats of suicide.

36 (b) Acute depression.

37 (c) History of violating protective orders.

1 (d) Possessing or attempting to possess a deadly weapon in violation of an order.

2 (e) Death threats or threats of possessiveness toward another.

3 (f) Stalking, as defined in RSA 633:3-a.

4 (g) Cruelty to or violence directed toward pets.

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

6 (a) Prevent counsel for the defendant to have contact with counsel for any of the
7 individuals protected by such provision; or

8 (b) Prevent the parties, if the defendant and one of the protected individuals are parties
9 in a domestic violence or marital matter, from attending court hearings scheduled in such matters or
10 exchanging copies of legal pleadings filed in court in such matters.

11 VII. If a person is charged with violation of a protective order under RSA 173-B or RSA
12 633:3-a, the person shall be detained without bail pending arraignment pursuant to RSA 173-B:9,
13 I(a).

14 VIII. In a release order issued pursuant to the provisions of this section, the court or justice
15 shall include a written statement that sets forth:

16 (a) All of the conditions to which the release is subject, in a manner sufficiently clear
17 and specific to serve as a guide for the person's conduct; and

18 (b) The provisions of RSA 641:5, relative to intimidation of witnesses and informants.

19 IX. A person charged with an offense who is, and was at the time the offense was committed,
20 on:

21 (a) Release pending trial for a felony or misdemeanor under federal or state law;

22 (b) Release pending imposition or execution of sentence, appeal of sentence or conviction,
23 or completion of sentence, for any offense under federal or state law; or

24 (c) Probation or parole for any offense under federal or state law, except as provided in
25 RSA 597:1-d, III may be detained for a period of not more than 72 hours from the time of arrest,
26 excluding Saturdays, Sundays and holidays. The law enforcement agency making the arrest shall
27 notify the appropriate court, probation or parole official, or federal, state or local law enforcement
28 official. Upon such notice the court shall also direct the clerk to notify by telephone the division of
29 field services, department of corrections, of the pending bail hearing. If the official fails or declines
30 to take the person into custody during that period, the person shall be treated in accordance with the
31 provisions of law governing release pending trial. Probationers and parolees who are arrested and
32 fail to advise their supervisory probation officer or parole officer in accordance with the conditions of
33 probations and parole may be subject to arrest and detention as probation and parole violators.

34 X. Notwithstanding any law to the contrary, upon the appearance of a person charged with a
35 class B misdemeanor, the court or justice shall issue an order that, pending arraignment, the person
36 be released on his personal recognizance, unless the court determines that such release will
37 endanger the safety of the person or of any other person or the community. The court shall appoint

1 an attorney to represent any indigent person charged with a class B misdemeanor denied release for
2 the purpose of representing such person at any detention hearing.

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

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

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

8 4 Bail and Recognizances; Review and Appeal of Release or Detention Order. Amend RSA
9 597:6-e to read as follows:

10 597:6-e Review and Appeal of Release or Detention Order.

11 I. If a person is ordered released by a bail commissioner [~~or magistrate~~], the person, or the
12 state, shall be entitled to a hearing, if requested, on the conditions of bail before a justice within 48
13 hours, Sundays and holidays excepted.

14 II. Subject to RSA 597:2, [~~X~~] **XI** the person or the state may file with the superior court a
15 motion for revocation of the order or amendment of the conditions of release set by a municipal or
16 district court, by a justice [~~or magistrate~~], or by a bail commissioner. The motion shall be
17 determined promptly. However, no action shall be taken on any such motion until the moving party
18 has provided to the superior court certified copies of the complaint, affidavit, warrant, bail slip, and
19 any other court orders relative to each charge for which a release or detention order was issued by a
20 justice, or a bail commissioner. In cases where a district court justice has made a finding, pursuant
21 to RSA 597:2, IV that the person poses a danger to another, the superior court shall, after
22 notification to both parties, the police department that brought the charges in district court, and the
23 victim, conduct a hearing and make written findings supporting any modifications and reasons for
24 new conditions or changes from the district court order. The reviewing court shall take into
25 consideration the district court's written findings, orders, pleadings, or transcript when making a
26 modification.

27 III. The person, or the state pursuant to RSA 606:10, V, may appeal to the supreme court
28 from a court's release or detention order, or from a decision denying revocation or amendment of
29 such an order. The appeal shall be determined promptly.

30 5 Bail and Recognizances; Detention and Sanctions for Default or Breach of Conditions. Amend
31 RSA 597:7-a, I to read as follows:

32 I. A peace officer may detain an accused until the accused can be brought before a justice [~~or~~
33 ~~magistrate~~] if the peace officer has a warrant issued by a justice for default of recognizance or for
34 breach of conditions of release or if the peace officer witnesses a breach of conditions of release. The
35 accused shall be brought before a justice [~~or magistrate~~] for a bail revocation hearing within [~~24~~] **48**
36 hours, ***Saturdays, Sundays, and holidays excepted.***

37 6 Report Required; Reference to Magistrates Removed. Amend 2024, 317:16 to read as follows:

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1 317:16 Report Required. Not later than January 1 of each year until 2030, the chief justice, or
2 designee, shall report to the governor, the president of the senate, and the speaker of the house to
3 provide an update as to the following information concerning bail commissioners [~~and magistrates~~]:
4 the number of active members [~~of each group~~], the anticipated level of attrition through retirement
5 or otherwise, the nature and hours of training received, and any concerns he or she has with the
6 continued viability of the system.

7 7 Repeal. The following are repealed:

8 I. 2024, 317:15, II, relative to appropriation regarding magistrates.

9 II. RSA 491-B, relative to magistrates.

10 III. RSA 597:7-a, I-b, relative to cash bail.

11 8 Effective Date. This act shall take effect 180 days after its passage.

**HB 592-FN- FISCAL NOTE
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AN ACT relative to magistrates and the standards applicable to and the administration of bail.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures*	\$0	Indeterminable	Indeterminable	Indeterminable
<i>Funding Source(s)</i>	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

Estimated Political Subdivision Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill eliminates the role of magistrates in the law, mandates that law enforcement officers present an arrestee before a Circuit or Superior Court within 24 hours (excluding weekends), and regulates bail-setting procedures.

The Judicial Branch asserts that this bill would eliminate statutory references to the magistrate position, which currently costs about \$480,000 per year in salary and benefits for three positions. This change will increase the number of bail commissioner fees required and necessitate judges to cover hearings during regular court hours that magistrates would have otherwise overseen. A judge's salary and benefits are twice those of a magistrate. With three magistrates being hired, trained, and starting their five-year terms on January 1, 2025, the Judicial Branch recommends that, if the legislature intends to eliminate the magistrate position, it should be phased out at the end of the current magistrates' five-year term. Although the overall impact of these changes

is uncertain and may potentially lead to cost savings, it is possible that the costs for the Judicial Branch could exceed \$100,000.

The Department of Safety indicates that the fiscal impact of the bill is currently indeterminable, as predicting its effect on current operations involving arrested individuals is challenging. Personnel may require additional time to fulfill the necessary requirements, which could be difficult to achieve due to the 24 hour nature of law enforcement activities.

The New Hampshire Association of Counties (NHAC) suggests that, while most aspects of the bill will not lead to increased expenditures on county correctional facilities, they have concerns regarding the provisions for releasing individuals charged. Specifically, Section 3, V of the bill which references electronic monitoring and supervision. The NHAC notes that it is assumed all counties automatically place released individuals under electronic monitoring/supervision; however, not all jails employ electronic monitoring, and those that do utilize an evidence-based process where not all individuals meet the criteria for such monitoring.

The New Hampshire Municipal Association (NHMA) states that with the elimination of the bail magistrate positions, this bill could have an indeterminable fiscal impact on municipal law enforcement costs.

Though this bill eliminates the appropriation language that funds the three magistrate positions in FY 2025, it is unclear what impact it will have as this bill takes effect 180 days after passage which may be after FY 2025 is completed and the appropriation is expended.

AGENCIES CONTACTED:

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