

HB 592-FN - VERSION ADOPTED BY BOTH BODIES

13Mar2025... 0448h

13Mar2025... 0940h

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 repeal of an appropriation. Explanation: Matter added to current law appears in ***bold italics***.Matter removed from current law appears ~~[in brackets and struck through]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 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 Judicial Training; Magistrates Removed. Amend RSA 490-K:1 through 490-K:3 to read as follows:

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

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

- I. Orientation for new judges on procedures and functions of the applicable court and relevant procedural and substantive law;
- II. Education for new judges on major legal subjects and practical skills needed by them and appropriate to the jurisdiction of the court in which they serve;
- III. At least one hour of training devoted to the topics of legal and judicial ethics, professionalism, preventing implicit bias, mental health, and domestic violence.

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

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

I. When a person is arrested with or without a warrant, he or she may be committed to a county correctional facility, to a police station or other place provided for the detention of offenders, or otherwise detained in custody. The person shall be taken to appear before a ~~[magistrate,]~~ circuit court~~;~~ or a superior court without unreasonable delay to answer for the offense. All persons shall appear no later than ~~[24]~~ **36** hours after arrest~~[, or no later than 36 hours after arrest if arrested between 8:00 a.m. and 1:00 p.m. and the person's attorney is unable to attend an arraignment on the same day,]~~ Saturdays, Sundays, and holidays excepted. ~~[In the case of a person arrested when the court is not open within the next 24 hours, a decision on bail shall be made by a magistrate within 24 hours of the arrest for any of the crimes listed in RSA 597:2, III(a)(1). Hearings held by a magistrate pursuant to this section may be held telephonically, and the magistrate may conduct such hearing from any location within the state of New Hampshire, without regard to the jurisdiction in which the person was arrested. This section shall not be construed to prohibit telephonic hearings that are otherwise permitted by law or court rule].~~

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

597:2 Release of a Defendant Pending Trial.

I. Except as provided in paragraph III or VIII, 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;
- (c) Detained; or
- (d) Temporarily detained to permit revocation of conditional release pursuant to the provisions of paragraph XII.

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) A person may be detained for a period of not more than 36 hours from the time of his or her arrest, excluding weekends and holidays. 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 finding of probable cause that such release will not reasonably assure the appearance of the person as required or will endanger the safety of the person or of any other person or the community. The court may also consider as a factor in its determination under this paragraph or paragraph IV that a person who is detained as a result of his or her inability to meet the required conditions or post the required bond is the parent and sole caretaker of a child and whether, as a result, such child would become the responsibility of the division for children, youth, and families.

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

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

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

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

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

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

(c) There shall be a rebuttable presumption that an alleged victim of the crime shall not be required to testify at the bail hearing. Nothing in this section shall preclude an alleged victim from voluntarily testifying at such hearing.

The state may present evidence of statements made in the course of an investigation through a law enforcement officer.

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

- (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 he determines will reasonably assure the appearance of the person as required and the safety of the person or of any other person or the community, 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 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
- (C) 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 of any other person or the community.

(b) In considering the conditions of release described in subparagraph VII(a)(1) or VII(a)(2), 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.

XIII. 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).

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

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

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

- (a) Prevent counsel for the defendant to have 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.

XI. In a release order issued pursuant to the provisions of 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 intimidation of witnesses and informants.

XII. A person charged with an offense who is, and was at the time the offense was committed, on 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 36 hours from the time of his or her arrest, excluding weekends 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 also direct the clerk to notify by telephone the division of field services, department of corrections, of the pending bail hearing. If the official 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.



XIII. Notwithstanding any law to the contrary, 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 that such release will endanger the safety of the person or of any other person or the community. 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.

XIV. 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.

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

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

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

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

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

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

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

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

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

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

317:16 Report Required. Not later than January 1 of each year until 2030, the chief justice, or designee, shall report to the governor, the president of the senate, and the speaker of the house to provide an update as to the following information concerning bail commissioners ~~[and magistrates]~~: the number of active members ~~[of each group]~~, the

anticipated level of attrition through retirement or otherwise, the nature and hours of training received, and any concerns he or she has with the continued viability of the system.

7 Repeal. The following are repealed:

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

II. RSA 491-B, relative to magistrates.

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

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

LBA
25-0795
1/3/25

HB 592-FN- FISCAL NOTE
AS INTRODUCED

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
Revenue Fund(s)	None			
Expenditures*	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source(s)	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
Funding Source(s)	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