


The Impact of the War on Drugs and Bail in New Hampshire

Human, economic, and disparate consequences
of New Hampshire's current marijuana laws

By the ACLU of New Hampshire



New Hampshire's crime rate has decreased by over 31 percent in the last decade,ⁱ though you would not know it from the fear-based rhetoric dominating criminal justice debates at the New Hampshire legislature. As we should have learned long ago – from the war on drugs, to mandatory minimums, to zero tolerance – policies that rely on fear rather than fact can have devastating human and economic consequences.

For decades the Granite State suffered the natural outcome and human toll of these fear-based policy decisions. Between 1970 and 2015, New Hampshire's jail population increased 448 percent.ⁱⁱ Between 1983 and 2018, New Hampshire's prison population increased 432 percent.ⁱⁱⁱ Until 2018, New Hampshire regularly incarcerated people not because of what they did, but simply because they could not afford their bail.^{iv} Even today, New Hampshire stands alone in New England as the only state that still criminalizes adults for the mere possession of marijuana.^v Again – none of this was by accident.

While we have long known that there is no silver bullet to reducing crime, we have also long known that incarceration is an ineffective solution to building safer communities.^{vi} Fortunately, in recent years New Hampshire lawmakers have turned to more data-driven public safety policies. In 2017, lawmakers decriminalized some personal possession of marijuana by adults, though left in place a system that still led to the arrest of almost 1,500 people annually for mere possession. Similarly, in 2018, lawmakers took a major step toward ending the state's wealth-based pretrial incarceration structure by reforming the cash bail system.

This progress is again under attack at the legislature. Despite a lack of any data to support their claims, law enforcement and their legislator allies are working to return New Hampshire to a bail system that needlessly incarcerated thousands of people each year, including many simply because they could not afford their bail—of even a few hundred dollars. These same opponents are working to stop legislation that would finally legalize the possession of marijuana by adults.

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DID YOU KNOW?

New Hampshire is the only state in New England that still criminalizes adults for the mere possession of marijuana.

Lawmakers are again at a crossroads. Now is the time for New Hampshire lawmakers to focus on the facts.

Let's start with the legalization of marijuana for adults. Two bills have passed the New Hampshire House and are now under consideration by the Senate.

One bill, HB 1598, would legalize the use and possession of marijuana by adults. In addition, it would establish a

regulation and sales regime through the state liquor commission. The other, HB 629, would be a simple legalization of the use and possession of marijuana by adults—it would not address the issue of marijuana regulation and sales. Passage of either bill would mark a major move toward ending New Hampshire's war on marijuana.

This June, America will mark year fifty-two of its seemingly endless war on its people. The United States has now spent over **one trillion dollars** enforcing its “war on drugs.”^{vii} It has helped turn America into the incarceration capital of the world and has harmed countless people.^{viii} It has disproportionately targeted Black, Brown, Indigenous, and poor white people.^{ix}

Even now, with full knowledge of these well-documented harms, many politicians and law enforcement leaders continue to maintain the harmful policies and rhetoric that continue this war.

The good news is that the vast majority of Americans agree that it is time to end the “war on drugs” and instead invest in treatment and addiction services.^x In New Hampshire, a first step is ending the state's war on marijuana.

The data is clear. Sold to the public in the name of public safety, New Hampshire's marijuana laws still needlessly ensnare over a thousand people – disproportionately Black people – in its criminal justice system every year.

It is past time for New Hampshire lawmakers to listen to the people and legalize marijuana possession by adults. Seventy-four percent of Granite Staters support marijuana legalization, including majorities of Democrats, Independents, and Republicans.^{xi} And, support for marijuana legalization has greatly increased since 2013, when it was just 49 percent.^{xii}

New Hampshire decriminalized marijuana possession in 2017.^{xiii} Despite this reform, New Hampshire still arrested nearly 1,500 people for marijuana possession in 2020 (the most recent year of data available).^{xiv} And, while New Hampshire's decriminalization law may reduce the number of people facing arrest for marijuana possession, people in possession of 3/4 ounce or less of marijuana or five grams or less of hashish still face fines (ranging from \$100 to \$1,200, depending in the number of offenses within a three-year period).^{xv}

These arrests impact people of all ages.

A marijuana possession arrest can ruin lives. These arrests are not just an unnecessary burden on New Hampshire residents and the judicial system, but also negatively affect access to employment, housing, and child custody, among others, for the person arrested. These collateral harms can last for decades, even after someone has served their time or paid any required fines.

2020 NH Marijuana Possession Arrests

(Source: FBI UCR Data Portal)

Age	# Arrests - Female	# Arrests - Male
10 - 12	0	1
13 - 14	7	10
15	3	20
16	16	47
17	12	39
18	17	102
19	32	100
20	28	107
21	29	72
22	19	54
23	19	55
24	14	46
25 - 29	39	207
30 - 34	33	111
35 - 39	10	67
40 - 44	19	36
45 - 49	10	28
50 - 54	9	20
55 - 59	7	24
60 - 64	1	14
65 +	0	10

New Hampshire's war on marijuana is a monumental waste of tax dollars. For each of the 1,494 marijuana arrests in 2020,^{xvi} our tax dollars had to pay for a judge, a clerk, law enforcement officers, prosecutor, and others to process the case. According to an economic analysis published in 2013, the 2,769 marijuana possession arrests in 2010 cost New Hampshire taxpayers \$6,526,364 that year.^{xvii} Despite New Hampshire's decriminalization of marijuana possession in 2017,^{xviii} law enforcement still arrested 1,494 people in 2020 for marijuana possession,^{xix} meaning New Hampshire taxpayers may still be paying close to \$3.25 million each year to enforce marijuana possession laws.

DID YOU KNOW?

New Hampshire spends nearly

\$3.25M

a year to enforce cannabis possession laws.



New Hampshire's war on marijuana is enforced with a staggering racial bias. In 2020, Black people in our state were 4.8 times more likely to be arrested for marijuana possession when compared with white people,^{xx} despite both groups using marijuana at roughly the same rate.^{xxi} And, this disparity is on the rise, up from 2.6 times more likely to be arrested in 2010 – a 46 percent increase.^{xxii} The racial bias in enforcement is even more pronounced with the city police departments in Manchester and Concord, where the disparities are 13.9 times and 5.8 times respectively.^{xxiii} The discriminatory enforcement of New Hampshire's marijuana laws means that Black people are more likely to face the immediate harms of a marijuana arrest and charge, including potential incarceration, as well as the collateral consequences, including the loss of jobs, housing, and child custody.

Black people in our state were 4.8 times more likely to be arrested for marijuana possession when compared with white people.

Opponents of marijuana legalization rely on fear-based rhetoric divorced from reality. Marijuana legalization opponents argue that marijuana legalization leads to increased youth use, crime, and traffic fatalities. They also argue that marijuana is a gateway drug that is partially responsible for the opioid epidemic. The data from states that have legalized marijuana do not support these claims.

Fortunately, New Hampshire lawmakers have the benefit of years of data from states that have legalized marijuana to distinguish myth from reality.

Multiple studies have found no increase in youth use in states that have legalized marijuana.^{xxiv} In fact, a recent article in the Journal of the American Medical Association noted that recreational marijuana laws “were associated with an 8% decrease in the odds of marijuana use and a 9% decrease in the odds of frequent marijuana use.”^{xxv} And, despite the rhetoric that marijuana legalization would undermine New Hampshire's work to reduce the opioid crisis,^{xxvi} evidence suggests that marijuana legalization is connected with a reduction in opioid related deaths.^{xxvii}

Legalization has also not substantially affected crime rates.^{xxviii} In fact, according to a multi-year study of Colorado and Washington, marijuana legalization may have improved crime clearance rates.^{xxix} And, it also appears that marijuana legalization has had “little or no effect” on traffic accidents and fatalities.^{xxx}

Despite this research debunking the myths opponents of marijuana legalization, that has not stopped them from bringing fear to the legislature. During a House Criminal Justice and Public Safety Committee hearing on marijuana legalization earlier this year, the representative from the New Hampshire Association of Police Chiefs testified that the Granite State has already seen a “spillover effect” of crime following the legalization of marijuana by our neighbors to the south, east, and west.^{xxxi}

Again, let’s look at the facts. Maine legalized marijuana possession by adults in 2016, Massachusetts in 2017, and Vermont in 2018. Between 2016 and 2020 (the most current year of complete data), crime in New Hampshire decreased 22 percent, with steady declines each year during that period.^{xxxii}

New Hampshire’s war on marijuana does not make us safer, it wastes taxpayer dollars, and ruins lives. It is time for it to end.

**Using fact,
not fear, to
make NH
safer and
more just.**

Bail Reform in New Hampshire

Until 2018 in New Hampshire, after an arrest – wrongful or not – a person’s ability to leave jail and return home too often depended on their access to money. That year, a bipartisan group of lawmakers came together to address New Hampshire’s wealth-based incarceration system – a system that magnified the impact of New Hampshire’s and America’s racial wealth divide. At the time, thousands of people were regularly incarcerated pretrial (before their trial, while still presumed innocent) not because of what they allegedly did, but simply because they couldn’t afford their bail.

Beginning in 2018, the legislature passed a series of reforms to reduce wealth-based incarceration. For the following two years, a diverse group of stakeholders, including prosecutors, judges, legislators, jail superintendents, and civil liberties advocates, met to refine the bail system. The Commission’s recommendations were subsequently passed in 2019 and 2020, resulting in a system that carefully balances the need to protect individual liberty while also ensuring that the court could still order the pretrial detention of anyone, regardless of the charges against them, that they found to be a flight risk or danger to the community.

BAIL REFORM

The facts

Despite this work, there has been a sustained push from law enforcement to repeal New Hampshire's bail reforms - a push that has relied on anecdotes and fear-based rhetoric that is divorced from reality. Their argument is simple - bail reform has made our communities less safe, and thus needs to be rolled back. In committee hearings and before the media, police chiefs and proponents peddled fear, sharing horrible stories about people on bail allegedly committing more crimes.

But there's just one problem: the data says otherwise. Yet unfortunately, the lack of data has not stopped each New Hampshire chamber from passing its own attempt to roll back bail reform.

In the New Hampshire House of Representatives, HB 1476 would mandate the pretrial incarceration of any individual charged with any felony or misdemeanor offense if they were on release for any offense at the time, including a Class B misdemeanor offense that carries no jail time if convicted. People arrested would be held for up to 36 hours (excluding weekends and holidays) until a hearing before a judge. HB 1476 would also prohibit personal recognizance bail in such cases, thus ensuring that people without wealth will be incarcerated at least until they submit a plea or go to trial.

Crime rates in NH have decreased over 14 percent since the implementation of bail reform.

In the New Hampshire Senate, SB 294 would mandate the incarceration of people charged with any one of 13 offenses prior to arraignment pretrial based only on unsubstantiated allegations. The legislation would also amend the bail statute to mandate the pretrial incarceration of an individual charged with certain offenses who failed to appear three or more times within the previous three years, regardless of the reason for failing to appear (e.g. lack of transportation or childcare). Finally, the legislation would mandate the pretrial incarceration of an individual charged with any offense if they were on release for any offense at the time, including a Class B misdemeanor offense that carries no jail time if convicted.

It is clear that these pieces of legislation are based in fear, not evidence. Despite the fear-based rhetoric and limited anecdotal stories from some law enforcement leaders, proponents of this legislation have proved no data to support their claims that the current bail system makes New Hampshire less safe. In fact, crime rates in New Hampshire have decreased over 14 percent since the implementation of bail reform. In addition, during testimony on these bills before the New Hampshire Senate Judiciary and House Criminal Justice and Public Safety Committees, law enforcement leadership (including the Bedford Police Chief in the Senate and the Manchester Police Chief in the House) testified that bail reform has made our communities less safe. Again, the data available does not support those claims.

Here is the data.

A review of the crime statistics from the NH Department of Safety website between 2018 (the year of the first bail reform bill) and 2020 (the most current year of data available) statewide as well as in the home districts of the police chiefs who testified makes clear that crime and arrests are both down substantially since bail reform.

Statewide Findings

Between 2018 - 2020, Group A crimes were down 14.3 percent and arrests were down 22.6 percent statewide.

Between 2018 - 2020, Group B arrests were down 20 percent statewide.

Statewide Group A Crimes

2018

- Total crimes: 60,447
- Crimes per 100,000: 4,558.6
- Total arrests: 33,481
- Arrests per 100,000: 2,525.0

2019

- Total crimes: 57,107
- Crimes per 100,000: 4,306.7
- Total arrests: 32,222
- Arrests per 100,000: 2,430.0

2020

- Total crimes: 51,784
- Crimes per 100,000: 3,905.3
- Total arrests: 25,896
- Arrests per 100,000: 1,952.9

Statewide Group B Arrests

(The state website only lists total number of arrests for Group B Crimes)

Group B arrests (total arrests – not per 100,000):

- o 2018 - 12,878
- o 2019 - 13,189
- o 2020 - 10,292

Note: A list of Group A and Group B crimes is on page 12.

Manchester Findings

- Between 2018 - 2020, Group A crimes were **down 9.6 percent** and **arrests were down 16.6 percent** in Manchester.
- Between 2018 - 2020, Group B arrests were **down 30 percent** in Manchester.

Manchester (Group A crimes)

- 2018
- o Total crimes: 9,198
 - o Crimes per 100,000: 8,404.5
 - o Total arrests: 3,522
 - o Arrests per 100,000: 3,218.2

- 2019
- o Total crimes: 8,603
 - o Crimes per 100,000: 7,856.3
 - o Total arrests: 3,052
 - o Arrests per 100,000: 2,788.7

- 2020
- o Total crimes: 8,321
 - o Crimes per 100,000: 7,595.9
 - o Total arrests: 2,543
 - o Arrests per 100,000: 2,323.6

Manchester Group B arrests

The state website only lists total number of arrests for Group B Crimes

Total arrests - not per 100,000

- o 2018: 528
- o 2019: 467
- o 2020: 369

Bedford Findings

- Between 2018 - 2020, Group A crimes were **down 29.5 percent** and **arrests were down 19.5 percent** in Bedford.
- Between 2018 - 2020, Group B arrests were even in Bedford.

Bedford (Group A crimes)

- 2018
- o Total crimes: 661
 - o Crimes per 100,000: 3,028.8
 - o Total arrests: 342
 - o Arrests per 100,000: 1,567.1

- 2019
- o Total crimes: 601
 - o Crimes per 100,000: 2,753.8
 - o Total arrests: 363
 - o Arrests per 100,000: 1,663.3

- 2020
- o Total crimes: 466
 - o Crimes per 100,000: 2,135.3
 - o Total arrests: 275
 - o Arrests per 100,000: 1,260.1

Bedford Group B Arrests

The state website only lists total number of arrests for Group B Crimes

Total arrests - not per 100,000

- o 2018: 111
(Driving Under the Influence accounted for 59 of the total)
- o 2019: 149
(Driving Under the Influence accounted for 107 of the total)
- o 2020: 111
(Driving Under the Influence accounted for 60 of the total)

Current law already allows the court to detain any individual pretrial if they are a flight risk or danger to the community. Under current law, “[i]f a person is charged with any criminal offense ... the court may order preventive detention without bail.”^{xxxiv} Instead of allowing the court to assess the facts in an individual case, this bill would eliminate the court’s discretion and replace it with a mandatory one-size-fits-all approach that will deprive potentially thousands of Granite Staters of their freedom without any evidence that any of the individuals pose a threat to our communities.^{xxxv}

In addition, those seeking to undo bail reform have also not clarified how current law – which provides the court with multiple ways to incarcerate someone pretrial if they violate the terms of their release, including committing a new crime, and provides the state with the power to challenge the conditions of a release order – is insufficient. *Note: See pages 13 and 14 for more details.*

In addition to ignoring the myriad ways current law provides the state with the power to incarcerate people pretrial, the bills’ proponents have also ignored all of the data that shows that the bills under consideration could actually make our communities less safe. The research is clear - in the vast majority of cases, incarcerating people pretrial actually increases the likelihood that the person will be rearrested for a new offense. A recent study by Core Correctional Solutions (funded by Arnold Ventures) that reviewed nearly 1.5 million people booked into jail in Kentucky between 2009 – 2018 found that pretrial detention for any time is associated with a higher likelihood of arrest for a new crime before case disposition.^{xxxvi} As the report noted, these findings are consistent with “decades of research on the effects of custodial sanctions” and “the reality is that getting people out of jail sooner rather than later is better.”^{xxxvii} According to the report’s recommendations, “in most instances, jail is likely the most harmful option during the pretrial stage” and resources focused on treatment and support are far more effective than punishment.^{xxxviii}

This legislation will also disproportionately harm Black people. New Hampshire’s criminal laws are enforced with a staggering racial bias. For example, in 2020 Black people were 3.29 times more likely to be arrested compared with white people.^{xxxix} For many low-level discretionary offenses the disparities were even more troubling, including 4.8 times for marijuana possession (despite both groups using marijuana at roughly the same rate^{xl}), 5.9 times for disorderly conduct, and 6.52 times for vagrancy.^{xli} Because Black people are disproportionately arrested, they will also be disproportionately incarcerated under this legislation’s mandatory incarceration regime.

In the midst of a national reckoning around systemic racism and police violence, it is unconscionable that legislators would expand the already disproportionate incarceration of Black people in New Hampshire.

year	Overall (WhiteArrests)	Overall (Black Arrests)	Overall (Disparity Rate)	All Drugs (WhiteArrests)	All Drugs (Black Arrests)	All Drugs (Disparity Rate)	Disorderly Conduct (WhiteArrests)	Disorderly Conduct (Black Arrests)	Disorderly Conduct (Disparity Rate)
Statewide									
2020	32,780	2,084	3.29	4,033	262	3.36	709	81	5.9
2019	42,839	2,468	2.97	5,480	331	3.12	863	76	4.55
2018	43,472	2,507	2.98	6,163	388	3.25	812	61	3.88
2017	45,485	2,566	2.91	7,418	439	3.06	906	93	5.3
2016	44,606	2,358	2.73	7,882	476	3.12	870	64	3.8

Manchester									
2020	2,465	444	2.5	526	55	1.45	79	20	3.51
2019	3,163	489	2.15	596	58	1.35	103	23	3.1
2018	3,573	540	2.1	762	86	1.56	96	23	3.33
2017	3,716	540	2.03	677	86	1.76	175	35	2.78
2016	3,099	453	2.03	428	73	2.37	146	30	2.85

year	Drunkenness (WhiteArrests)	Drunkenness (Black Arrests)	Drunkenness (Disparity Rate)s	Vagrancy (WhiteArrests)	Vagrancy (Black Arrests)	Vagrancy (Disparity Rate)	MJ Possession (WhiteArrests)	MJ Possession (Black Arrests)	MJ Possession (Disparity Rate)
2020	1,639	1,639	2.2	103	13	6.52	1,332	125	4.85
2019	3,777	104	1.34	87	7	4.16	2,120	148	3.61
2018	3,681	100	1.4	89	8	4.64	2,384	178	3.86
2017	4,030	133	1.7	71	10	7.28	3,171	199	3.24
2016	3,485	111	1.64	61	4	3.39	3,652	238	3.37

2020	No Data	14	9	8.93	13	13	13.9
2019		31	3	1.34	20	5	3.47
2018		34	5	2.04	23	15	9.06
2017		29	3	1.43	51	22	5.99
2016		16	2	1.73	66	16	3.37

Population Figures	Total	White	Black
New Hampshire	1,388,992	93.10%	1.80%
Manchester	115,644	84.80%	6.10%

Sources

Arrests: FBI UCR Data Portal

Population: U.S. Census - Quick Facts

The problems with these bills don't stop there.

1

This legislation creates a new and unnecessary financial burden on New Hampshire. During the Senate Judiciary hearing on SB 294, the New Hampshire courts estimated that it would require up to an additional \$1.9 million each year to implement this law, including hiring additional judges and support staff.^{xlii} And, that figure does not include the unknown incarceration expenses that local jails would incur to house potentially thousands of additional people each year at a cost ranging between \$105 and \$125 a day per person.^{xliii}

2

This legislation raises also serious constitutional concerns. The U.S. Supreme Court has made clear that individuals cannot be detained pretrial without bail unless there is a basis of dangerousness, and that dangerousness must be proven by “clear and convincing evidence.”^{xliv} After an initial hearing in which the prosecution may prevail with calling actual witnesses, this bill instead presumes dangerousness based exclusively on the charge against a person. In addition, in certain cases using a presumption against the defendant, the legislation mandates the incarceration of individuals pretrial unless the individual proves a negative – that they are not dangerous. Putting the burden of disproving dangerousness on the defendant and creating a presumption of pretrial detention raises constitutional concerns.

3

Pretrial detention has a devastating human toll. Pretrial detention, even for a short period of time, increases the likelihood of innocent people pleading guilty to a crime, loss of employment, income, and housing, and traumatic family disruption. This legislation would subject potentially thousands of Granite Staters to these devastating collateral harms.

4

This legislation would result in the pretrial incarceration of people whose underlying charge does not carry jail time if convicted. This bill specifically allows for pretrial detention for individuals charged only with a class B misdemeanor. The definition of a class B misdemeanor is an offense that carries no jail time. This bill risks imposing a harsher penalty on someone presumed innocent than allowed under the law if that person is subsequently found guilty. This makes no sense.

5

SB 294 would also mandate pretrial incarceration for failure to appear, regardless of the reason. Under the legislation, individuals shall be incarcerated pretrial if they have failed to appear three or more times in the previous three years or twice in the present case. This legislation ignores the fact that four of the five top reasons that individuals miss their court date have nothing to do with the case or public safety. They are: child care, transportation, employment requirements, or simply forgot.^{xlv} In many cases FTAs could be reduced by simply embracing reminder models that have been effectively deployed in other states, including text and call reminders.^{xlvi} These models have reduced FTAs and saved states hundreds of thousands of dollars in unneeded jail and warrant expenses.^{xlvii} New Hampshire should avoid this one-size-fits-all approach that risks needlessly re-filling our jails with pretrial detainees.

If lawmakers are truly concerned with reducing harm in New Hampshire communities, then we urge them to focus on strategies that are supported by evidence, including ending the war on drugs and ensuring adequate funding goes to treatment and the destigmatization of drug use and ensuring access to housing^{xlvi} and jobs that pay a living wage.^{xlix}

Another way is possible and necessary. It is time for New Hampshire lawmakers political leaders to stop legislating based on fear and anecdote and start investing in data-driven solutions to making our communities safer and more just.

Resources

Group A Offenses

Crimes Against Property

- Arson
- Bribery
- Burglary/Breaking & Entering
- Counterfeiting/Forgery
- Destruction/Damage/Vandalism of Property
- Embezzlement
- Extortion/Blackmail
- False Pretenses/Swindle/Confidence Game
- Credit Card/Automatic Teller Fraud
- Impersonation
- Welfare Fraud
- Wire Fraud
- Motor Vehicle Theft
- Robbery
- Stolen Property Offenses
- Pocket-picking
- Purse-snatching
- Shoplifting
- Theft From Building
- Theft From Coin Operated Machine or Device
- Theft From Motor Vehicle
- Theft of Motor Vehicle Parts/Accessories
- All Other Larceny

Crimes Against Society

- Drug/Narcotic Violations
- Drug Equipment Violations
- Betting/Wagering
- Operating/Promoting/Assisting Gambling
- Gambling Equipment Violations
- Sports Tampering
- Pornography/Obscene Material
- Prostitution
- Assisting or Promoting Prostitution
- Weapon Law Violations

Crimes Against Persons

- Murder and Nonnegligent Manslaughter
- Negligent Manslaughter
- Kidnapping/Abduction
- Rape
- Sodomy
- Sexual Assault With An Object
- Fondling
- Incest
- Statutory Rape
- Aggravated Assault
- Simple Assault
- Intimidation

Group B Offenses

- Bad Checks
- Curfew/Loitering/Vagrancy Violations
- Disorderly Conduct
- Driving Under the Influence
- Drunkenness

- Family Offenses (Nonviolent)
- Liquor Law Violations
- Peeping Tom
- Runaway
- Trespass of Real Property

Resources

Persons can be held pretrial under current bail reform law:

597:1-c Offenses Punishable by Life Imprisonment.

- Any person arrested for an offense punishable by up to life in prison, where the proof is evident or the presumption great, shall not be allowed bail.

597:2 Release of a Defendant Pending Trial.

- 597:2(III)(c) – Failure of a person to abide by previous bail conditions. If there is probable cause to believe that, while on release pending resolution of a previous offense, the person committed a felony, class A misdemeanor, or driving or operating while impaired, there shall be a rebuttable presumption that the person will not abide by a condition that the person not commit a new offense. 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 clear and convincing evidence after a hearing that no reasonable alternative or combination of conditions will assure that the person will not commit a new offense. The court may consider any relevant factors in making its determination.
- 597:2(VIII) – A person charged with an offense who is, or was at the time the offense was committed, on release pending trial for a felony or misdemeanor under federal or state law, release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under federal or state law; or 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 72 hours from the time of his or her arrest, excluding Saturdays, Sundays 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 direct the clerk to notify by telephone the department of corrections, division of field services, of the pending bail hearing. If the department 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.

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

- I. If a person is ordered released by a bail commissioner, 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, 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 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.

Resources

597:7-a Detention and Sanctions for Default or Breach of Conditions.

- I. A peace officer may detain an accused until he can be brought before a justice if he has a warrant issued by a justice for default of recognizance or for breach of conditions of release or if he witnesses a breach of conditions of release. The accused shall be brought before a justice for a bail revocation hearing within 48 hours, Saturdays, Sundays and holidays excepted.
- I-a. If a person violates a restraining order issued under RSA 458:16, III, or a protective order issued under RSA 633:3-a, or a temporary or permanent protective order issued under RSA 173-B by committing assault, criminal trespass, criminal mischief, or another criminal act, a peace officer shall arrest the accused, detain the accused pursuant to RSA 594:19-a, bring the accused before a justice pursuant to RSA 594:20-a, and refer the accused for prosecution. Such arrest may be made within 12 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of the peace officer.
- II. A person who has been released pursuant to the provisions of this chapter and who has violated a condition of his release is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.
- III. The state may initiate a proceeding for revocation of an order of release by filing a motion with the court which ordered the release and the order of which is alleged to have been violated. The court may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before the court for a proceeding in accordance with this section. The court shall enter an order of revocation and detention if, after a hearing, the court:
 - (a) Finds that there is:
 - (1) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or
 - (2) Clear and convincing evidence that the person has violated any other condition of release or has violated a temporary or permanent protective order by conduct indicating a potential danger to another; and
 - (b) Finds that:
 - (1) There is no condition or combination of conditions of release that will assure that the person will not flee or that the person will not pose a danger to the safety of himself or any other person or the community; or
 - (2) The person is unlikely to abide by any condition or combination of conditions of release.
- If there is probable cause to believe that, while on release, the person committed a federal or state felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person shall not pose a danger to the safety of any other person or the community. If the court finds that there are conditions of release that shall assure that the person will not flee or pose a danger to the safety of himself or any other person or the community, and that the person will abide by such conditions, he shall treat that person in accordance with the provisions of RSA 597:2 and may amend the conditions of release accordingly.
- IV. The state may commence a prosecution for contempt if the person has violated a condition of his release.

APPENDIX

ⁱ Group A Crimes per 100,000 population decreased from 5,761.2 per 100,000 in 2011 to 3,912.0 per 100,000 in 2020. In addition, with once exception (between 2011 – 2012), the crime rate decreased every year during this 10-year period. See NH Department of Safety, New Hampshire Crime Summary (Public), 2018, 2019, 2020, available at <https://crimestats.dos.nh.gov/public/View/RSReport.aspx?ReportId=22>.

ⁱⁱ Incarceration Trends in New Hampshire, Vera Institute of Justice, Dec. 2019, available at <https://www.vera.org/downloads/pdf-downloads/state-incarceration-trends-new-hampshire.pdf>.

ⁱⁱⁱ Id.

^{iv} Paul Cuno-Booth, Can ‘Preventive Detention’ Replace Money Bail?, Keene Sentinel, Sept. 12, 2018, available at <https://thecrimereport.org/2018/09/12/can-preventive-detention-replace-money-bail/>.

^v Andrew Eills, What can the West Coast teach New Hampshire about marijuana? States’ guidelines for medical cannabis offer a road map for Granite State, Mar. 23, 2022, available at <https://www.nhbr.com/what-can-the-west-coast-teach-new-hampshire-about-marijuana/>.

^{vi} Don Stemen, The Prison Paradox: More Incarceration Will Not Make Us Safer, Vera Evidence Brief, July 2017, available at https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.

^{vii} Nathaniel Lee, America has spent over a trillion dollars fighting the war on drugs. 50 years later, drug use in the U.S. is climbing again., CNBC, Jun. 17 2021, available at <https://www.cnbc.com/2021/06/17/the-us-has-spent-over-a-trillion-dollars-fighting-war-on-drugs.html>.

^{viii} Pamela K. Lattimore, et. al., A better path forward for criminal justice: Reimagining pretrial and sentencing, Brookings, April 2021, available at <https://www.brookings.edu/research/a-better-path-forward-for-criminal-justice-reimagining-pretrial-and-sentencing/>.

^{ix} Nkechi Taifa, Race, Mass Incarceration, and the Disastrous War on Drugs, The Brennan Center, May 10, 2021, available at <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs>.

^x Danny Franklin, Overwhelming Majority Say War on Drugs Has Failed, Support New Approach, Bully Pulpit Interactive, June 9, 2021, available at <https://www.aclu.org/other/poll-results-american-attitudes-toward-war-drugs>.

^{xi} University of New Hampshire, The Survey Center, Bipartisan Support for NH Marijuana Legislation; Most Consider Legislature's Redistricting Maps Unfair, Feb. 25, 2022, available at https://scholars.unh.edu/cgi/viewcontent.cgi?article=1688&context=survey_center_polls.

^{xii} Id.

^{xiii} NH Rev Stat § 318-B:2-c (2017).

^{xiv} Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Possession – Marijuana, 2020, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^{xv} NH Rev Stat § 318-B:2-c (2017).

^{xvi} Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Possession – Marijuana, 2020, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^{xvii} ACLU, The War on Marijuana in Black and White, p. 164, available at <https://www.aclu.org/report/report-war-marijuana-black-and-white>.

^{xviii} NH Rev Stat § 318-B:2-c (2017).

- ^{xix} 1,494 marijuana possession arrests in 2020 and 2,769 marijuana possession arrests in 2010. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Possession – Marijuana, 2020, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest> & ACLU, The War on Marijuana in Black and White, p. 127, available at <https://www.aclu.org/report/report-war-marijuana-black-and-white>.
- ^{xx} New Hampshire arrested 1,494 people for marijuana possession in 2020. 1,332 arrests of white people and 125 arrests of Black people. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Possession – Marijuana, 2020, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest> & U.S. Census Bureau, QuickFacts, New Hampshire, available at <https://www.census.gov/quickfacts/fact/table/manchestercitynewhampshire,concordcitynewhampshire/PST045221>.
- ^{xxi} Fred Dews, Charts of the week: Marijuana use by race, Islamist rule in Middle East, climate adaptation savings, Brookings, Aug. 11, 2017, available at <https://www.brookings.edu/blog/brookings-now/2017/08/11/charts-of-the-week-marijuana-use-by-race/>.
- ^{xxii} ACLU, The War on Marijuana in Black and White, p. 127, available at <https://www.aclu.org/report/report-war-marijuana-black-and-white>.
- ^{xxiii} Manchester Police Department arrested 26 people for marijuana possession in 2020. 13 arrests of white people and 13 arrests of Black people. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Possession – Marijuana, 2020, Manchester Police, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. U.S. Census Bureau, QuickFacts, Manchester city, New Hampshire, available at <https://www.census.gov/quickfacts/fact/table/manchestercitynewhampshire,concordcitynewhampshire/PST045221>; Concord Police Department arrested 33 people for marijuana possession in 2020. 26 arrests of white people and 6 arrests of Black people. Concord's population is 43,976. White people comprise percent of the population and Black people comprise percent of the population. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Possession – Marijuana, 2020, Concord Police, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. U.S. Census Bureau, QuickFacts, Concord city, New Hampshire, available at <https://www.census.gov/quickfacts/concordcitynewhampshire>.
- ^{xxiv} See, e.g. Anderson, Mark D., et al.. Association of Marijuana Laws With Teen Marijuana Use New Estimates From the Youth Risk Behavior Surveys, Journal of the American Medical Association, July 2019 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6618849/>; Healthy Kids Colorado Survey (HKCS) data, available at <https://marijuanahealthinfo.colorado.gov/health-data/healthy-kids-colorado-survey-hkcs-data>; Marijuana Policy Project, Teen Marijuana Use Does Not Increase Following Marijuana Policy Reforms, available at <https://www.mpp.org/issues/legalization/teen-marijuana-use-does-not-increase/>.
- ^{xxv} Anderson, Mark D., et al.. Association of Marijuana Laws With Teen Marijuana Use New Estimates From the Youth Risk Behavior Surveys, Journal of the American Medical Association, July 2019, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6618849/>.
- ^{xxvi} Ed. Superior and tax-free! NH should not peddle pot, Union Leader, Mar. 23, 2022, available at https://www.unionleader.com/opinion/editorials/superior-and-tax-free-nh-should-not-peddle-pot/article_59a522d4-14b7-522d-bb45-3a7573316cbc.html.
- ^{xxvii} Greta Hsu & Balázs Kovács, Association between county level cannabis dispensary counts and opioid related mortality rates in the United States: panel data study, BMJ, Jan. 27, 2021, available at <https://www.bmj.com/content/372/bmj.m4957>; Greg Rosalsky, The Data On Legalizing Weed, Planet Money/NPR, Mar. 16, 2021, available at <https://www.npr.org/sections/money/2021/03/16/976265525/the-data-on-legalizing-weed>.
- ^{xxviii} Angela Dills, et. al., The Effect of State Marijuana Legalizations: 2021 Update, CATO Institute, Feb. 2, 2021, available at <https://www.cato.org/sites/cato.org/files/2021-01/PA908.pdf>; Greg Rosalsky, The Data On Legalizing Weed, Planet Money/NPR, Mar. 16, 2021, available at <https://www.npr.org/sections/money/2021/03/16/976265525/the-data-on-legalizing-weed>.
- ^{xxix} David A. Makin, et. al., Marijuana Legalization and Crime Clearance Rates: Testing Proponent Assertions in Colorado and Washington State, National Institute of Justice, 2019, available at <https://nij.ojp.gov/library/publications/marijuana-legalization-and-crime-clearance-rates-testing-proponent-assertions>.
- ^{xxx} Greg Rosalsky, The Data On Legalizing Weed, Planet Money/NPR, Mar. 16, 2021, available at <https://www.npr.org/sections/money/2021/03/16/976265525/the-data-on-legalizing-weed>; Angela Dills, et. al., The Effect of State Marijuana Legalizations: 2021 Update, CATO Institute, Feb. 2, 2021, available at <https://www.cato.org/sites/cato.org/files/2021-01/PA908.pdf>; & Benjamin Hansen, et. al., Early Evidence on Recreational Marijuana Legalization and Traffic Fatalities, Mar. 2018, available at https://www.nber.org/papers/w24417?utm_source=npr_newsletter&utm_medium=email&utm_content=20210311&utm_term=5237211&utm_campaign=money&utm_id=7043805&orgid=305&utm_att1=money.

^{xxxi} Kevin Landrigan, New plan to legalize pot for adults emerges, Union Leader, Jan. 21, 2022, available at <https://news.yahoo.com/plan-legalize-pot-adults-emerges-095000561.html>.

^{xxxii} Group A Crimes per 100,000 population decreased from 5,045.2 per 100,000 in 2016 to 3,912.0 per 100,000 in 2020. See NH Department of Safety, New Hampshire Crime Summary (Public), 2018, 2019, 2020, available at <https://crimestats.dos.nh.gov/public/View/RSReport.aspx?ReportId=22>.

^{xxxiii} Group A Crimes per 100,000 population have substantially decreased annually since bail reform in 2018, from 4,558.4 per 100,000 in 2018, to 4,305.9 per 100,000 in 2019, to 3,901.4 per 100,000 in 2020. See NH Department of Safety, New Hampshire Crime Summary (Public), 2018, 2019, 2020, available at <https://crimestats.dos.nh.gov/public/View/RSReport.aspx?ReportId=22>.

^{xxxiv} See RSA 597:2(III)(a) (“If a person is charged with any criminal offense, an offense listed in RSA 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged with a violation of a protective order issued under RSA 173-B, the court may order preventive detention without bail”)

^{xxxv} Kevin Landrigan, Bail reform change clears House committee, Union Leader, Oct 5, 2021 available at https://www.unionleader.com/news/politics/state/bail-reform-change-clears-house-committee/article_af58860b-e7cc-5b8e-ac43-c474324ed6b1.html.

^{xxxvi} The Hidden Costs of Pretrial Detention Revisited, Core Correctional Solutions, Mar. 21, 2022, available at <https://craftmedia-bucket.s3.amazonaws.com/uploads/HiddenCosts.pdf>.

^{xxxvii} Id. (“These results are largely consistent with those found in previous analyses of data from Kentucky, where no “deterrent effect” of pretrial detention was observed on pretrial outcomes. In addition, that no deterrent effects were revealed is also consistent with decades of research on the effects of custodial sanctions (e.g., incarceration in either jail or prison) on outcomes like recidivism. In fact, the current analyses show that, at least with respect to rearrest during the pretrial period, longer stints in pretrial detention actually did more harm than good in terms of rearrest rates. [¶] The key takeaway from these analyses is that incarcerating people prior to their trial does not result in better pretrial outcomes in terms of failure to appear or rearrest. Indeed, there is no observable “deterrent effect” of pretrial detention, and in fact there is a consistent “criminogenic effect” of pretrial detention on rearrest. This means that the costly option of incarcerating defendants prior to trial is not being translated into a public benefit of an increase in public safety. [¶] It is equally important to note that there is no magic amount of time spent in pretrial detention that will result in a consistent public benefit (i.e, the “three day rule” can be safely abandoned)—the reality is that getting people out of jail sooner rather than later is better.”)

^{xxxviii} Id.

^{xxxix} New Hampshire’s population is 1,388,992. In 2020, New Hampshire law enforcement arrested 32,780 white people and 2,084 Black people for all offenses. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, All Crimes, 2020, New Hampshire, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. White people comprise 93.1 percent of the population and Black people comprise 1.8 percent of the population, available at U.S. Census Bureau, QuickFacts, New Hampshire, available at <https://www.census.gov/quickfacts/fact/table/NH/PST045221>.

^{xl} Fred Dews, Charts of the week: Marijuana use by race, Islamist rule in Middle East, climate adaptation savings, Brookings, Aug. 11, 2017, available at <https://www.brookings.edu/blog/brookings-now/2017/08/11/charts-of-the-week-marijuana-use-by-race/>.

^{xli} New Hampshire’s population is 1,388,992. In 2020, New Hampshire law enforcement arrested 1,332 white people and 125 Black people for Drug Possession – Marijuana, 709 white people and 81 Black people for Disorderly Conduct, and 103 white people and 13 Black people for Vagrancy. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, All Crimes, 2020, New Hampshire, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. White people comprise 93.1 percent of the population and Black people comprise 1.8 percent of the population, available at U.S. Census Bureau, QuickFacts, New Hampshire, available at <https://www.census.gov/quickfacts/concordcitynewhampshire>.

^{xlii} See, Testimony of Mary Ann Dempsey (Judicial Branch), Hearing on SB 294, Jan. 18, 2022, available at https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1995&inflect=2.

^{xliii} See, e.g. HB 1306-FN, As Introduced, 2022 Session, available at http://www.gencourt.state.nh.us/lsr_search/billText.aspx?id=1700&type=4.

^{xliv} United States v. Salerno, 481 U.S. 739 (1987).

^{xlv} Tanner Pruitt, et. al, Bail Reform in New Hampshire, The Nelson A. Rockefeller Center at Dartmouth College, June 22, 2020, p. 7, available at https://rockefeller.dartmouth.edu/sites/rockefeller.drupalmulti-prod.dartmouth.edu/files/prs_bail_reform_final.pdf.

^{xlvi} *Id.* at 11-14.

^{xlvii} *Id.*

^{xlviii} Matthew Yglesias, Study: adding low-income housing to poor neighborhoods lowers crime and boosts property values, Vox, May 2, 2016, available at <https://www.vox.com/2016/5/2/11568262/low-income-housing-impact>.

^{xlix} Juleyka Lantigua-Williams, Raise the Minimum Wage, Reduce Crime? A new White House report links higher hourly incomes to lower rates of law-breaking, The Atlantic, May 3, 2016, available at <https://www.theatlantic.com/politics/archive/2016/05/raise-the-minimum-wage-reduce-crime/480912/>.