

Current law provides the court with multiple ways to incarcerate someone pretrial, including if they are charged with certain offenses and if they violate the terms of their release (including committing a new crime). Current law also provides the state with the power to challenge a release order or the conditions of a release order.

*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.

*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.