

## **Oppose HB 1476– Don’t Needlessly Incarcerate Thousands of Granite Staters and do so at a Staggering Financial Cost**

HB 1476 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.

**This legislation will not make our communities safer.** Current law already allows a judge to detain individuals pretrial if they are a flight risk *or danger* to the community.<sup>i</sup> This one-size-fits-all legislation will deprive potentially thousands of Granite Staters of their freedom without any evidence that any of the individuals pose a threat to our communities.<sup>ii</sup> Judges are best equipped to determine who is dangerous and they should retain the power to engage in individualized determinations before depriving someone of their freedom.

**This legislation is 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 NH have decreased over 14 percent since the implementation of bail reform.<sup>iii</sup> Legislators should not enact laws that would deprive the freedom of potentially thousands of Granite Staters each year without clear evidence that the incarceration is necessary to protect public safety. This legislation is dangerous.

**This legislation creates a new and unnecessary financial burden on New Hampshire.** During the debate around SB 294, a different version of this legislation, 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.<sup>iv</sup> 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.<sup>v</sup> Lawmakers should focus our limited tax dollars on investments that will actually make our communities safer and more just.

**As COVID-19 again spreads throughout jails, this legislation would unnecessarily add potentially thousands of additional people to these facilities.** As the highly transmissible COVID-19 omicron variant spreads, New Hampshire jails, including Rockingham and Strafford, have recently faced new outbreaks.<sup>vi</sup> Research shows that reductions in the United States incarceration rate would have prevented millions of COVID-19 cases and tens of thousands of deaths, both inside jails and prisons and in their surrounding communities.<sup>vii</sup> That’s because incarcerated people are housed in close quarters, are often in poor health, are unable to engage in social distancing practices recommended by the CDC, and thus are at heightened risk of becoming infected with and dying from COVID-19. People who work in jail facilities are also at heightened risk of contracting COVID-19 and bringing it back into their communities. This bill would be deeply harmful in the best of times, during COVID it can be deadly.

**This legislation ignores the work of the bail commission.** For two years a diverse group of stakeholders, including prosecutors, judges, legislators, jail superintendents, and civil liberties advocates, met to rethink New Hampshire’s 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 ensuring the safety of our communities. This legislation reflects none of the

recommendations from the Commission and would roll back reforms that reduced unnecessary incarceration and saved the state millions of dollars without jeopardizing public safety.

**This legislation raises 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.”<sup>viii</sup> 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.

**This legislation flips innocent until proven guilty on its head.** This legislation in effect presumes guilt by mandating the detention of individuals based merely on the fact that they were charged with an offense. To deny the liberty of someone who is presumed innocent, the evidentiary standard should be high and the burden of meeting it should be on the government. This legislation fails to meet this basic test.

**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.

**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.

## Oppose HB 1476 - Keep Bail Decisions in the Hands of the Court

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<sup>i</sup> 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 ... .”)

<sup>ii</sup> 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](https://www.unionleader.com/news/politics/state/bail-reform-change-clears-house-committee/article_af58860b-e7cc-5b8e-ac43-c474324ed6b1.html).

<sup>iii</sup> 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 [Beyond 20/20 Perspective - View Reporting Services report \(nh.gov\)](https://www.nh.gov/department-of-safety/crime-summary).

<sup>iv</sup> 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](https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1995&inflect=2).

<sup>v</sup> 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](http://www.gencourt.state.nh.us/lsr_search/billText.aspx?id=1700&type=4).

<sup>vi</sup> Megan Fernandes & Karen Dandurant, *How Seacoast shelters, nursing homes, jails cope with COVID outbreaks*, Fosters Daily Democrat, De. 22, 2001, available at <https://www.fosters.com/story/news/local/2021/12/22/seacoast-nh-maine-homeless-shelters-nursing-homes-jails-covid-outbreaks/8981402002/>.

<sup>vii</sup> Bill Chappell, *Crowded U.S. Jails Drove Millions Of COVID-19 Cases, A New Study Says*, NPR, Sept. 2, 2021, available at <https://www.npr.org/2021/09/02/1033326204/crowded-jails-drove-millions-of-covid-19-cases-a-new-study-says>.

<sup>viii</sup> *United States v. Salerno*, 481 U.S. 739 (1987).