

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

HB 1476 as amended (Amendment 2022-0895h) would mandate the pretrial incarceration of any individual charged with any felony or Class A 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. As amended, HB 1476 would also mandate the pretrial incarceration of any individual charged with a third Class B misdemeanor offense. In both cases the person would be held for up to 36 hours (excluding weekends and holidays) until a hearing before a judge. Also, as amended, HB 1476 would prohibit personal recognizance bail in such cases, thus ensuring that people without wealth will be incarcerated at least until they plea or go to trial.

This legislation will harm public safety. 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.ⁱ 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.”ⁱⁱ 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.ⁱⁱⁱ New Hampshire legislators should oppose this legislation and focus on data-driven solutions to harm in our communities.

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.”^{iv} 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.^v The court is 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.^{vi} 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. The rhetoric in New Hampshire is similar to the fear-based rhetoric coming from opponents of bail reform in New York and Houston, TX, despite data showing that bail reform in those jurisdictions is reducing incarceration without harming public safety.^{vii} New Hampshire legislators must ensure that laws are driven by facts and evidence, not fear.

This legislation will 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.^{viii} 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^{ix}), 5.9 times for disorderly conduct, and 6.52 times for vagrancy.^x 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.

This legislation will expand the criminalization of poverty in New Hampshire. Personal recognizance bail was implemented to ensure that people who could not afford bail could be released, assuming the court did not find them to be a danger or flight risk. Under this proposed legislation, people who are arrested while on pretrial release will be denied personal recognizance bail, thus setting up a new wealth-based incarceration system where those with wealth can purchase their freedom, while those without will stay in jail. This two-tiered justice system should have no place in the Granite State.

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.^{xi} 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.^{xii} Lawmakers should focus our limited tax dollars on investments that will actually make our communities safer and more just.

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."^{xiii} This bill instead presumes dangerousness based exclusively on the charge against a person, which runs counter to the Constitution.

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

ⁱ The Hidden Costs of Pretrial Detention Revisited, Core Correctional Solutions, Mar. 21, 2022, *available at* <https://craftmediabucket.s3.amazonaws.com/uploads/HiddenCosts.pdf>.

ⁱⁱ *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.”)

ⁱⁱⁱ *Id.*

^{iv} 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”)

^v 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.

^{vi} 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 \(nh.gov\)](#).

^{vii} See, Ames Grawert & Noah Kim, *The Facts on Bail Reform and Crime Rates in New York State*, Brennan Center, Mar. 22, 2022, *available at* <https://www.brennancenter.org/our-work/research-reports/facts-bail-reform-and-crime-rates-new-york-state>; see also, Andrew Schneider, *Harris County’s misdemeanor bail reforms are working, a new report finds*, Houston Public Media, Mar. 3, 2022, *available at* <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2022/03/03/420398/two-years-on-harris-countys-misdemeanor-bail-reforms-appear-to-be-working-as-intended>.

^{viii} 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/concordcitynewhampshire>.

^{ix} 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/>.

^x 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/fact/table/NH/PST045221>.

^{xi} 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.

^{xii} 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.

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