

Support HB 46 – Study Ways to Strengthen Bail Reform

HB 46 would establish a committee to study the use of court magistrates throughout the state court system to supplement or replace the current bail commissioner positions.

Bail is the process that determines whether someone accused of a crime is incarcerated before their trial. It is supposed to serve two purposes – to ensure that someone accused of a crime will appear in court and to ensure that people who pose a danger to the community are detained even though they have not been convicted of a crime. Because bail decisions can result in the incarceration of someone who is innocent in the eyes of the law, the burden to holding someone is supposed to be appropriately high. As the late Chief Justice of the U.S. Supreme Court William Rehnquist wrote nearly 40 years ago, “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”ⁱ

Unfortunately, in New Hampshire, much like the rest of the country, bail turned into something completely different. Until bail reform in 2018, thousands of Granite Staters were incarcerated pre-trial each year not because they were a danger to their community, but simply because they could not afford to pay their bail. Bail reforms that began in 2018 made two major changes. They limited the ability to incarcerate people simply because they could not afford their freedom and strengthened the power of the government to incarcerate someone pre-trial if they were found to be a danger to the community.

The 2023 legislative session includes new attempts to roll back bail reform that would result in the needless pre-trial incarceration of thousands of Granite Staters each year.

We urge all legislators, including those seeking its repeal, to look at the facts. One of the main arguments raised by those seeking to roll back bail reform centers around the fact that bail commissioners, who are not trained judges, make the initial bail determination and release people who pose a danger to the community. But, there has been no data provided to show that this is in fact happening, particularly on a scale that would warrant major revisions to the bail statute. If this is a true concern of bail reform opponents, then HB 46 would create an opportunity to study the bail commissioner system and the potential benefits of replacing bail commissioners with magistrate judges. This legislation enjoys broad bi-partisan support.

Support HB 46 – Study Ways to Strengthen New Hampshire’s existing bail system, including ways to ensure that trained judges make all decisions surrounding bail.

ⁱ *United States v. Salerno*, 481 U.S. 739 at 755 (1987).