

**HB 1645-FN - VERSION ADOPTED BY BOTH BODIES**

06/16/2020 1492s

06/16/2020 1525s

2020 SESSION

20-2127

04/10

HOUSE BILL

***1645-FN***

AN ACT

relative to superior court judgments; adding a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services and the release of a defendant pending trial; prison privatization; misdemeanor domestic violence offenses; immunity from arrest or prosecution for certain alcoholic beverage violations; police officers reporting misconduct; criminal mischief; screening for all law enforcement officers for psychological stability prior to assuming their duties as certified officers; and prohibiting the use of chokeholds by law enforcement officers.

SPONSORS: Rep. Abbas, Rock. 8; Rep. Doucette, Rock. 8

COMMITTEE: Criminal Justice and Public Safety

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AMENDED ANALYSIS

This bill:

I. Amends the waiting period to petition for annulment of a misdemeanor domestic violence offense.

II. Allows the superior court to render equitable remedies in actions against the state.

III. Adds a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services and adds a provision for determining whether the court will order the release of a defendant pending trial.

IV. Prohibits the state or county department of corrections from transferring the housing of prisoners to a correctional facility operated by a private or for-profit entity, except when a corrections emergency exists.

V. As a result of the committee established in 2019, 87 (SB112), establishes a procedure to determine an offender's indigence for the purpose of financial ability to pay the bail commissioner's fee; requires the court to develop criteria for determining whether an offender is indigent; requires identification cards be issued to bail commissioners; requires the court to develop an education program for bail commissioners; and establishes a committee to study the feasibility of providing remote access to a bail commissioner's services.

VI. Provides immunity from arrest or prosecution for certain alcoholic beverage violations for a person under 21 years of age who contacts medical or emergency services as a result of an alcohol overdose.

VII. Requires law enforcement officers to report misconduct by other law enforcement officers.

VIII. Inserts a definition of public property into the criminal mischief statute.

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IX. Establishes a fund for psychological stability screening for candidates for certification as law enforcement officers; transfers money from the drug forfeiture fund to the psychological stability screening fund, and allows the police standards and training council to reimburse the state or a political subdivision for psychological stability screening for candidates for certification as law enforcement.

X. Prohibits the use of chokeholds by law enforcement officers.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT relative to superior court judgments; adding a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services and the release of a defendant pending trial; prison privatization; misdemeanor domestic violence offenses; immunity from arrest or prosecution for certain alcoholic beverage violations; police officers reporting misconduct; criminal mischief; screening for all law enforcement officers for psychological stability prior to assuming their duties as certified officers; and prohibiting the use of chokeholds by law enforcement officers.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Annulment of Criminal Records. Amend RSA 651:5, III(b)(2)(h) is repealed and reenacted to  
2 read as follows:

3 (h) For any misdemeanor domestic violence offense under RSA 631:2-b, 10 years. In the  
4 event an individual is convicted of a subsequent misdemeanor or felony domestic violence offense  
5 under RSA 631:2-b, the earlier domestic violence conviction shall not eligible for an annulment until  
6 the most recent domestic violence conviction has become eligible for an annulment.

7 2 Equitable Damages in Superior Court. Amend RSA 491:8 to read as follows:

8 491:8 Actions Against State. The superior court shall have jurisdiction to enter judgment  
9 against the state of New Hampshire founded upon any express or implied contract with the state,  
10 ***including specific performance and other equitable remedies that are not limited to money***  
11 ***damages***. Any action brought under this section shall be instituted by bill of complaint and shall be  
12 tried by the court without a jury. The jurisdiction conferred upon the superior court by this section  
13 includes any set-off, claim or demand whatever on the part of the state against any plaintiff  
14 commencing an action under this section. The attorney general, upon the presentation of a claim  
15 founded upon a judgment against the state, shall submit the claim to the department or agency  
16 which entered into the contract, and said department or agency shall manifest said claim for  
17 payment from the appropriation under which the contract was entered into; provided, that if there is  
18 not sufficient balance in said appropriation, the attorney general shall present said claim to the  
19 general court for the requisite appropriation.

20 3 Applicability. RSA 491:8 as amended by this section 2 of this act shall apply to express or  
21 implied contracts with the state that are in effect on or after the effective date of section 2 of this act.

22 4 New Subparagraph; Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial  
23 Services. Amend RSA 597:43, I by inserting after subparagraph (l) the following new subparagraph:

24 (m) A bail commissioner, appointed by the governor.

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1           5 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, I-IV to  
2 read as follows:

3           597:2 Release of a Defendant Pending Trial.

4           I. Except as provided in paragraph VI, upon the appearance before the court of a person  
5 charged with an offense, the court shall issue an order that, pending arraignment or trial, the person  
6 be:

7                   (a) Released on his or her personal recognizance or upon execution of an unsecured  
8 appearance bond, pursuant to the provisions of paragraph III;

9                   (b) Released on a condition or combination of conditions pursuant to the provisions of  
10 paragraph III; ~~or~~

11                   (c) ***Detained; or***

12                   (d) Temporarily detained to permit revocation of conditional release pursuant to the  
13 provisions of paragraph VIII.

14           II. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be  
15 entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing,  
16 the person be:

17                   (a) Released on his or her personal recognizance or upon execution of an unsecured  
18 appearance bond, pursuant to the provisions of paragraph III;

19                   (b) Released on a condition or combination of conditions pursuant to the provisions of  
20 paragraph III; or

21                   (c) Detained.

22           ~~III. (a) The court shall order the pre-arraignment or pretrial release of the person on his or~~  
23 ~~her personal recognizance, or upon execution of an unsecured appearance bond in an amount~~  
24 ~~specified by the court, or cash or corporate surety bail, subject to the condition that the person not~~  
25 ~~commit a crime during the period of his or her release, and subject to such further condition or~~  
26 ~~combination of conditions that the court may require unless the court determines by a~~  
27 ~~preponderance of the evidence that such release will not reasonably assure the appearance of the~~  
28 ~~person as required. A person who the court determines to be a danger to the safety of that person or~~  
29 ~~the public shall be governed by the provisions of paragraph IV, except that evidence of substance~~  
30 ~~misuse or homelessness may be considered by the court, but such evidence shall not be the sole basis~~  
31 ~~of a dangerous determination.~~

32                   ~~(b) In determining the amount of the unsecured appearance bond or cash or corporate~~  
33 ~~surety bail under subparagraph III(a), if any, the court:~~

34                           ~~(1) Shall not impose a financial condition that will result in the pretrial detention of~~  
35 ~~a person solely as a result of that financial condition.~~

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1                   ~~(2) Shall consider whether the person is the parent and sole caretaker of a child and~~  
2 ~~whether, as a result, such child would become the responsibility of the division of children, youth~~  
3 ~~and families.~~

4                   ~~(3) Shall consider whether the person is the sole income producer for dependents.~~

5                   ~~(e) For purposes of the court's determination under this paragraph, evidence of~~  
6 ~~homelessness or a lack of a mailing address by itself shall not constitute prima facie evidence of a~~  
7 ~~lack of reasonable assurance that a person will not appear.~~

8                   ~~(d) If, as a result of the court's decision, a person is detained, the court shall issue on the~~  
9 ~~record findings of fact that document the basis for its decision.~~

10                   ~~(e) If the court or justice determines by a preponderance of the evidence that the release~~  
11 ~~described in this paragraph will not reasonably assure the appearance of the person, the court shall~~  
12 ~~issue an order that includes the following conditions, subject to the limitation in subparagraph (b)(1):~~

13                   ~~(1) The condition that the person not commit a crime during the period of release;~~  
14 ~~and~~

15                   ~~(2) Such further condition or combination of conditions that the court determines~~  
16 ~~will reasonably assure the appearance of the person as required, which may include the condition~~  
17 ~~that the person:~~

18                   ~~(A) Execute an agreement to forfeit, upon failing to appear within 45 days of the~~  
19 ~~date required, such designated property, including money, as is reasonably necessary to assure the~~  
20 ~~appearance of the person as required, and post with the court such indicia of ownership of the~~  
21 ~~property or such percentage of the money as the court or justice may specify;~~

22                   ~~(B) Furnish bail for his or her appearance by recognizance with sufficient~~  
23 ~~sureties or by deposit of moneys equal to the amount of the bail required as the court may direct; and~~

24                   ~~(3) Satisfy any other condition that is reasonably necessary to assure the appearance~~  
25 ~~of the person as required and to assure the safety of the person or the public.~~

26                   ~~(f) In considering the conditions of release described in subparagraph (e)(2)(A) or~~  
27 ~~(e)(2)(B), the court may, upon its own motion, or shall, upon the motion of the state, conduct an~~  
28 ~~inquiry into the source of the property to be designated for potential forfeiture or offered as collateral~~  
29 ~~to secure a bond, and shall decline to accept the designation, or the use as collateral, of property~~  
30 ~~that, because of its source, will not reasonably assure the appearance of the person as required.~~

31                   ~~(g) If the court determines by a preponderance of the evidence that a person has failed to~~  
32 ~~appear on any previous matter charged as a felony, class A misdemeanor, or driving or operating~~  
33 ~~while impaired, or a reasonably equivalent offense in an out of state jurisdiction, 3 or more times~~  
34 ~~within the past 5 years, there shall be a rebuttable presumption that release will not reasonably~~  
35 ~~assure the appearance of the person as required.] *When considering whether to release or*~~  
36 ~~*detain a person, the court shall consider the following issues:*~~

1           (a) *Safety of the public or the defendant. If a person is charged with any*  
2 *criminal offense, an offense listed in RSA 173-B:1, I, or a violation of a protective order*  
3 *under RSA 458:16, III, or after arraignment, is charged with a violation of a protective*  
4 *order issued under RSA 173-B, the court may order preventive detention without bail, or, in*  
5 *the alternative, may order restrictive conditions including but not limited to electronic*  
6 *monitoring and supervision, only if the court determines by clear and convincing evidence*  
7 *that release will endanger the safety of that person or the public. In determining whether*  
8 *release will endanger the safety of that person or the public, the court may consider all*  
9 *relevant factors presented pursuant to paragraph IV.*

10           (b) *Assuring the court appearance of charged persons.*

11           (1) *The court shall order the pre-arraignment or pretrial release of the*  
12 *person on his or her personal recognizance, or upon execution of an unsecured appearance*  
13 *bond in an amount specified by the court, or cash or corporate surety bail, subject to the*  
14 *condition that the person not commit a crime during the period of his or her release, and*  
15 *subject to such further condition or combination of conditions that the court may require*  
16 *unless the court determines by a preponderance of the evidence that such release will not*  
17 *reasonably assure the appearance of the person as required.*

18           (2) *If the court determines by a preponderance of the evidence that a person*  
19 *has failed to appear on any previous matter charged as a felony, class A misdemeanor, or*  
20 *driving or operating while impaired, or a reasonably equivalent offense in an out-of-state*  
21 *jurisdiction, 3 or more times within the past 5 years, or twice on the present case, there*  
22 *shall be a rebuttable presumption that release will not reasonably assure the appearance*  
23 *of the person as required.*

24           (3) *In determining the amount of the unsecured appearance bond or cash or*  
25 *corporate surety bail, the court may consider all relevant factors bearing upon a person's*  
26 *ability to post bail.*

27           (4) *The court shall not impose a financial condition that will result in the*  
28 *pretrial detention of a person solely as a result of that financial condition unless the court*  
29 *determines by clear and convincing evidence that the nature of the allegations presents a*  
30 *substantial risk that the person will not appear and that no reasonable alternative will*  
31 *assure the person's appearance. The defendant shall be afforded the opportunity to be*  
32 *heard.*

33           (c) *Failure of a person to abide by previous bail conditions. If there is probable*  
34 *cause to believe that, while on release pending resolution of a previous offense, the person*  
35 *committed a felony, class A misdemeanor, or driving or operating while impaired, there*  
36 *shall be a rebuttable presumption that the person will not abide by a condition that the*  
37 *person not commit a new offense. The court shall not impose a financial condition that*

1 *will result in the pretrial detention of the person solely as a result of that financial*  
2 *condition unless the court determines by clear and convincing evidence after a hearing*  
3 *that no reasonable alternative or combination of conditions will assure that the person*  
4 *will not commit a new offense. The court may consider any relevant factors in making its*  
5 *determination.*

6 IV.(a) ~~[If a person is charged with any criminal offense, an offense listed in RSA 173-B:1, I or~~  
7 ~~a violation of a protective order under RSA 458:16, III, or after arraignment, with a violation of a~~  
8 ~~protective order issued under RSA 173-B, the court may order preventive detention without bail, or,~~  
9 ~~in the alternative, may order restrictive conditions including but not limited to electronic monitoring~~  
10 ~~and supervision, only if the court determines by clear and convincing evidence that release will~~  
11 ~~endanger the safety of that person or the public. The court may consider all relevant factors bearing~~  
12 ~~on whether the release will endanger the safety of that person or the public.~~

13 ~~(b)]~~ Evidence in support of preventive detention shall be made by offer of proof at the  
14 initial appearance before the court. At that time, the defendant may request a subsequent bail  
15 hearing where live testimony is presented to the court.

16 **(b)** At any subsequent hearing, such testimony may be presented via video conferencing,  
17 unless the court determines that witness testimony in court is necessary. A request by the  
18 defendant for in-court testimony shall be made by oral motion at the initial hearing or by written  
19 motion prior to any subsequent hearing. Any order granting the defendant's request shall be  
20 distributed to the parties at least 48 hours prior to any subsequent hearing.

21 (c) There shall be a rebuttable presumption that an alleged victim of the crime shall not  
22 be required to testify at the bail hearing. Nothing in this section shall preclude an alleged victim  
23 from voluntarily testifying at such hearing. The state may present evidence of statements made in  
24 the course of an investigation through a law enforcement officer.

25 6 Bail and Recognizances; Release of a Defendant Pending Trial. Amend RSA 597:2, IX to read  
26 as follows:

27 IX. Upon the appearance of a person charged with a class B misdemeanor, the court shall  
28 issue an order that, pending arraignment, the person be released on his or her personal  
29 recognizance, unless the court determines pursuant to paragraph ~~[IV]~~ **III** that such release will  
30 endanger the safety of the person or the public. The court shall appoint an attorney to represent any  
31 indigent person charged with a class B misdemeanor denied release for the purpose of representing  
32 such person at any detention hearing.

33 7 Legislative Findings. The general court hereby finds and declares that:

34 I. The management and operation of a correctional facility involves functions that are  
35 inherently governmental. The imposition of punishment on errant citizens through incarceration  
36 requires state, county, and local governments to exercise their coercive police powers over  
37 individuals and is thus distinguishable from privatization in other areas of government.

1 II. Issues of liability, accountability, and cost warrant a prohibition of the ownership,  
2 operation, or management of correctional facilities by for-profit private contractors.

3 8 Department of Corrections; Powers and Duties of Commissioner. Amend RSA 21-H:8, VI-VII  
4 to read as follows:

5 VI. The commissioner may enter into contracts with the state's counties, the governments of  
6 other states, ~~and~~ the federal government, ~~and~~ **or other** appropriate ~~private~~ **government**  
7 agencies or facilities and make proper and necessary arrangements with them for the transfer and  
8 reception of inmates and allow transfers to state prisons of any person. Any person who is confined  
9 awaiting trial on a felony charge may be transferred to the state prison from the county correctional  
10 facility, upon the recommendation of the superintendent of the county department of corrections, and  
11 with the approval of the county commissioners of said county. The superintendent may transfer a  
12 prisoner, without the approval of the county commissioners, if the superintendent determines the  
13 transfer is necessary for public safety or emergency reasons. The county commissioners shall review  
14 any such transfer at their next regular meeting. If the county commissioners reject the transfer, the  
15 prisoner shall be returned to the facility from which the prisoner came as soon as practicable.

16 VII.(a) The commissioner may order the assignment and transfer of persons committed to  
17 his **or her** custody to correctional facilities of the department or **correctional facilities operated**  
18 **by state governments in other jurisdictions, or public** facilities under contract with the  
19 department. **The commissioner shall not enter into a contract with a private or for-profit**  
20 **entity for the sole purpose of housing state prisoners.**

21 (b) **Notwithstanding subparagraph (a), if the governor, upon recommendation**  
22 **of the commissioner, declares by executive order that a corrections emergency exists that**  
23 **requires the commissioner to enter into a temporary contract with a private or for-profit**  
24 **entity to secure provisional housing for displaced prisoners, the commissioner may enter**  
25 **into such a contract, pending approval of the governor and the council. Temporary**  
26 **contracts entered into under this section shall not permanently or indefinitely replace a**  
27 **correctional facility operated by the state of New Hampshire or a contract with another**  
28 **publicly-operated facility.**

29 9 New Paragraph; County Departments of Corrections; Policies, Rules and Regulations. Amend  
30 RSA 30-B:6 by inserting after paragraph II the following new paragraph:

31 III.(a) No county department of corrections shall enter into a contract with a private or for-  
32 profit entity for the sole purpose of housing county prisoners. Nothing in this paragraph shall  
33 prohibit a county department of corrections from contracting for select services that are provided  
34 inside of a county correctional facility.

35 (b) Notwithstanding subparagraph (a), if the county commissioners declare that a  
36 corrections emergency exists that requires the superintendent to enter into a temporary contract  
37 with a private or for-profit entity to secure provisional housing for displaced prisoners, the

1 superintendent may enter into such a contract, pending approval of the county commissioners.  
2 Temporary contracts entered into under this section shall not permanently or indefinitely replace a  
3 county correctional facility or a contract with another publicly-operated facility.

4 10 Applicability. Sections 8-9 of this act shall not apply to a contract entered into prior to the  
5 effective date of sections 8-9 of this act by the commissioner of the department of corrections or a  
6 county department of corrections with a private entity for the housing of prisoners. Upon the  
7 expiration of any such contract, the commissioner or the county shall transfer housing of such  
8 prisoners to a state correctional facility operated by the state of New Hampshire or another state  
9 government, or a federal correctional facility operated by the federal government, or a county  
10 correctional facility operated by a county. Sections 8-9 of this act shall not apply to contracts for  
11 goods and services which are ancillary to the housing of prisoners such as medical or educational  
12 services, or repair and maintenance contracts.

13 11 New Section; Bail and Recognizances; Determination of Indigence and Payment of Bail  
14 Commissioner Fee. Amend RSA 597 by inserting after section 2-a the following new section:

15 597:2-b Determination of Indigence and Payment of Bail Commissioner Fee.

16 I. The arresting officer, at the point of arrest, shall inform the offender of the availability of  
17 the services of the bail commissioner. If the offender elects to utilize the bail commissioner's services  
18 and is not indigent, the offender shall pay the bail commissioner's fee directly to the bail  
19 commissioner. If the offender elects to utilize the services of the bail commissioner, but claims  
20 indigence, the court shall, to the extent of available funding, utilize all possible means to pay the bail  
21 commissioner's fee, and shall include written evidence of fee payment in the offender's case file.

22 II. The court shall develop uniform criteria to evaluate and determine whether an offender  
23 is indigent or not indigent for the purpose of the offender's ability to pay the bail commissioner's fee.  
24 Based on the criteria, the court shall render a finding of indigent or not indigent for the purpose of  
25 the offender's ability to pay the bail commissioner's fee.

26 III. If the court finds that the offender is not indigent for the purpose of paying the bail  
27 commissioner's fee, the offender shall reimburse the court for payment of the bail commissioner's fee.

28 IV. If the court finds that the offender is indigent for the purpose of paying the bail  
29 commissioner's fee, the offender shall not be liable to pay the fee.

30 12 Bail and Recognizances; Term. Amend RSA 597:17 to read as follows:

31 597:17 Term *and Identification Card*.

32 I. Bail commissioners shall be commissioned for 5 years and continue in office until their  
33 successors shall have qualified.

34 II. *The administrative judge of the superior court or the circuit court shall issue an*  
35 *identification card to each qualified bail commissioner in the state.*

36 13 Bail Commissioners; Educational Requirements for Bail Commissioners. Amend RSA  
37 597:18-a to read as follows:

1           597:18-a Educational Requirements for Bail Commissioners.

2           I. During September or October of each year [~~beginning in 1995~~], a justice of [~~each district or~~  
3 ~~municipal~~] ***the superior*** court, under the direction of the administrative judge of the [~~district and~~  
4 ~~municipal courts~~] ***superior court, and a justice from the circuit court, under the direction of***  
5 ***the administrative judge of the circuit court***, shall hold a meeting with all bail commissioners  
6 under the jurisdiction of such [~~court~~] ***courts***. This meeting shall be for the purpose of educating bail  
7 commissioners on the laws concerning their powers and duties.

8           II. ***The administrative judges of the superior and circuit courts shall jointly develop***  
9 ***an education program to ensure that bail commissioners have current information***  
10 ***regarding the status of the laws affecting bail commissioners and the powers and duties of***  
11 ***bail commissioners.***

12           ***III.*** A copy of all laws concerning bail commissioners and a copy of the latest edition of the  
13 Bail Commissioner's Handbook shall be provided to each bail commissioner at this annual meeting.

14           14 Study Committee; Establishing a Pilot Program for Remote Access to Bail Commissioner's  
15 Services.

16           I. There is established a committee to study establishing a pilot program for remote access  
17 to bail commissioner's services.

18           II. The members of the committee shall be as follows:

19           (a) Three members of the house of representatives, 2 of whom shall be from the judiciary  
20 committee, appointed by the speaker of the house of representatives.

21           (b) Two members of the senate, one of whom shall be from the judiciary committee,  
22 appointed by the president of the senate.

23           III. Members of the committee shall receive mileage at the legislative rate when attending  
24 to the duties of the committee.

25           IV. The committee shall study the feasibility of establishing a pilot program to allow remote  
26 access to a bail commissioner's services.

27           V. The members of the study committee shall elect a chairperson from among the members.  
28 The first meeting of the committee shall be called by the first-named house member. The first  
29 meeting of the committee shall be held within 45 days of the effective date of this section. Three  
30 members of the committee shall constitute a quorum.

31           VI. The committee shall report its findings and any recommendations for proposed  
32 legislation to the speaker of the house of representatives, the president of the senate, the house  
33 clerk, the senate clerk, the governor, and the state library on or before November 1, 2020.

34           15 New Section; Alcoholic Beverages; Enforcement, Requirements, and Penalties. Amend RSA  
35 179 by inserting after section 63 the following new section:

36           179:64 Immunity From Liability.

1           I.(a) No person under 21 years of age shall be arrested or prosecuted for an offense under  
2 this chapter if such person, in good faith and in a timely manner, requests medical or emergency  
3 treatment for himself, herself, or another person in a situation that involves risk of overdose to  
4 himself, herself, or another person under 21 years of age from the consumption of alcohol including  
5 but not limited to extreme physical illness, decreased level of consciousness, respiratory depression,  
6 coma, mania, or death from the consumption of alcohol.

7           (b) No person under 21 years of age shall be arrested or prosecuted for an offense under  
8 this chapter if such person was the individual for whom medical or emergency treatment or  
9 assistance was sought and the evidence of an offense under this chapter is obtained as a result of  
10 another person contacting emergency medical services or law enforcement.

11           II. This section shall not be a defense to a charge of or prosecution for driving or operating  
12 under the influence of alcohol pursuant to RSA 265-A.

13           16 New Subdivision; Reports of Misconduct by Law Enforcement Officers. Amend RSA 105 by  
14 inserting after section 18 the following new subdivision:

15                               Reports of Misconduct by Law Enforcement Officers

16           105:19 Reports of Misconduct by Law Enforcement Officers.

17           I. For the purposes of this section, "misconduct" means assault, sexual assault, bribery,  
18 fraud, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and  
19 illegal use of force as defined by the New Hampshire criminal code.

20           II. It shall be the duty of any law enforcement officer who observes misconduct by another  
21 law enforcement officer to notify the chief law enforcement officer in his or her department in  
22 writing immediately or as soon as is practicable after observing such misconduct. Within 7 days of  
23 receiving such notification, the chief law enforcement officer shall notify the police standards and  
24 training council of such misconduct in writing. If the chief law enforcement officer is the subject of  
25 the misconduct report, the reporting officer shall report directly to the police standards and training  
26 council.

27           III. No discriminatory, disciplinary, or retaliatory action shall be taken against any officer  
28 for any information given or disclosed by him or her in good faith in the course of making a report of  
29 misconduct under paragraph II.

30           IV. Any police department that receives a report of misconduct under this section shall  
31 timely conduct an investigation and reach a determination on the merits. After the investigatory  
32 entity determines that the evidence shows that the individual committed any acts of misconduct, the  
33 name of the individual and any act of misconduct shall be disclosed to the police standards and  
34 training council.

35           17 Destruction of Property; Criminal Mischief. Amend RSA 634:2, I to read as follows:

36           I. A person is guilty of criminal mischief who, having no right to do so nor any reasonable  
37 basis for belief of having such a right, purposely or recklessly damages *the* property of another, *or*

1 *who causes permanent or temporary damage to public property including vandalism,*  
2 *defacement, destruction, tampering with, or any other unauthorized alteration to public*  
3 *property.*

4 18 New Paragraph; Destruction of Property; Criminal Mischief. Amend RSA 634:2 by inserting  
5 after paragraph IV the following new paragraph:

6 IV-a. As used in this section, "public property" means any property that is not privately  
7 owned, including state or municipal property, or statues, monuments, or natural geological  
8 formations, sites, or rock surfaces located on public property that have been designated by the state  
9 or one of its political subdivisions or the federal government as a natural area or landmark.

10 19 Destruction of Property; Criminal Mischief. Amend RSA 634:2, VI to read as follows:

11 VI. Any person who is found guilty of criminal mischief under paragraph III of this section  
12 because he or she has vandalized, defaced, ~~[or] destroyed [any part of state or municipal property, or~~  
13 ~~any natural geological formation, site, or rock surface located on public property that has been~~  
14 ~~designated by the state or any of its political subdivisions or the federal government as a natural~~  
15 ~~area or landmark], **tampered with, or made any other unauthorized alteration, whether**~~  
16 **permanent or temporary, on public property,** shall be guilty of a ~~[class A misdemeanor]~~  
17 **violation** and shall also make restitution for any damage he or she has caused.

18 20 Police Standards and Training Council; Reimbursement of Expenses. Amend RSA 106-L:9 to  
19 read as follows:

20 106-L:9 Reimbursement of Expenses. The council may reimburse political subdivisions or the  
21 state for, or may pay for a portion of, the expenses incurred by the officers in attendance at police  
22 training programs conducted or approved by the council, **and the expenses incurred for**  
23 **psychological stability screening for candidates for certification as law enforcement**  
24 **officers.**

25 21 Controlled Drug Act; Drug Forfeiture Fund; Psychological Stability Screening. Amend RSA  
26 318-B:17-b, V(a) to read as follows:

27 (a) Of the first ~~[\$500,000]~~ **\$600,000, \$100,000 shall be credited to the police**  
28 **psychological stability screening fund established in RSA 106-L:16 and from the**  
29 **remainder:**

30 (1) Forty-five percent shall be returned to the fiscal officer or officers of the  
31 municipal, county, state, or federal government which provided the law enforcement agency or  
32 agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a  
33 special account and shall be used primarily for meeting expenses incurred by law enforcement  
34 agencies in connection with drug-related investigations. Except as provided in RSA 31:95-b, such  
35 funds shall be available for expenditure without further appropriation by the legislative body of the  
36 municipal, county, state or federal government, and shall not be transferred or expended for any  
37 other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special

1 nonlapsing account established within the office of the state treasurer and shall be in addition to all  
2 other state appropriations to such agency;

3           (2) Ten percent shall be deposited into a special nonlapsing account established  
4 within the office of the state treasurer for the department of health and human services; and

5           (3) Forty-five percent shall be deposited in a revolving drug forfeiture fund,  
6 administered by the department of justice pursuant to RSA 318-B:17-c; and

7           22 New Section; Police Psychological Stability Screening Fund. Amend RSA 106-L by inserting  
8 after section 15 the following new section:

9           106-L:16 Police Psychological Stability Screening Fund. There is established a police  
10 psychological stability screening fund for the purpose of reimbursing costs related to psychological  
11 stability screening for candidates for certification as law enforcement officers, which shall be  
12 administered by the council. The fund shall be nonlapsing and shall be continually appropriated to  
13 the council.

14           23 New Subparagraph; Police Psychological Stability Screening Fund. Amend RSA 6:12, I(b) by  
15 inserting after subparagraph (358) the following new subparagraph:

16           (359) Moneys deposited in the police psychological stability screening fund  
17 established in RSA 106-L:16.

18           24 Medical, Physical, and Psychological Standards for Law Enforcement Officers. Amend 1997;  
19 138:4 to read as follows:

20           138:4 Applicability. On or before July 1, 1998, the police standards and training council shall  
21 notify each affected local and county law enforcement agency as to those provisions of RSA 188-F:27,  
22 III-a through III-l, that assign additional standards. [~~Such additional standards shall take effect in~~  
23 ~~those localities only if they are approved for funding by the political subdivision.~~]

24           25 New Paragraph; Physical Force in Law Enforcement; Chokeholds Prohibited. Amend RSA  
25 627:5 by inserting after paragraph VIII the following new paragraph:

26           IX. The use of a chokehold by any law enforcement officer is prohibited, with the exception  
27 of the circumstances in paragraph II(a). In this paragraph, "chokehold" means the application of any  
28 pressure to the throat, windpipe, or neck, which prevents or reduces intake of air, or oxygen to the  
29 brain.

30           26 Effective Date.

31           I. Sections 16-19 of this act shall take effect January 1, 2021.

32           II. Sections 1, 4-6, 15, and 20-23 of this act shall take effect 60 days after its passage.

33           III. The remainder of this act shall take effect upon its passage.

**HB 1645-FN- FISCAL NOTE**

AS AMENDED BY THE SENATE (AMENDMENTS #2020-1492s and #2020-1525s)

AN ACT relative to superior court judgments; adding a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services and the release of a defendant pending trial; prison privatization; misdemeanor domestic violence offenses; immunity from arrest or prosecution for certain alcoholic beverage violations; police officers reporting misconduct; criminal mischief; screening for all law enforcement officers for psychological stability prior to assuming their duties as certified officers; and prohibiting the use of chokeholds by law enforcement officers.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Criminal Records and other dedicated funds			

**COUNTY:**

<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	\$0	\$0	\$0

**LOCAL:**

<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	\$0	\$0	\$0

**METHODOLOGY:**

**Section 1 amends the waiting period to petition for annulment of a misdemeanor domestic violence offense:**

The Department of Safety indicates the current waiting period is 3 years and this section of the bill would extend the waiting period to 10 years. The Division of State Police removes an average of 5,000 annulments per year from the Criminal History Record Database for a fee of \$100 per conviction. This provision would delay revenue attributable to domestic violence misdemeanors for an additional 7 years. The Division does not track the types of annulments processed and cannot estimate the impact the bill would have on state revenue. The Department assumes there will be no impact on state, county and local expenditures or on county or local revenues.

The Department of Corrections, Division of Field Services collects \$100 as an annulment investigation fee with each annulment request. In FY 2019, \$123,600 was collected by the Division and deposited into the State general fund. The Department cannot predict how many annulment petitions involving domestic violence will be delayed.

**Sections 2-3 relative to superior court judgments in actions against the state:**

The language in these sections is from SB755 which did not have a fiscal note.

**Sections 4-6 adding a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services, and relative to the release of a defendant pending trial:**

The New Hampshire Association of Counties indicates these sections will have be no discernible fiscal impact to the Counties. The Judicial Branch does not anticipate any effect on expenditures in the Branch as judges will continue to set bail in the same numbers as before.

**Sections 7-10 prohibiting prison privatization:**

The language in these sections is from HB 1272 which did not have a fiscal note.

**Sections 11-14 relative to the payment and education of bail commissioners, relative to criteria for determining an offender's indigence, and establishing a committee to study providing remote access to a bail commissioner's services:**

This language is from SB722 which did not have a fiscal note.

**Section 15 relative to immunity from arrest or prosecution for certain alcoholic beverage violations for a person under 21 years of age who reports a situation involving risk of alcohol overdose:**

This language from HB 1351 which did not have a fiscal note.

**Section 16 requiring police officers to report misconduct:**

The language in this section is from HB 1217 which did not have a fiscal note.

**Sections 17-19 relative to criminal mischief:**

These sections of the bill insert a definition of public property into the criminal mischief statute. The language is from HB1468 which did not have a fiscal note.

**Sections 20-24:**

- Requiring screening for all law enforcement officers for psychological stability prior to assuming their duties as certified officers;
- Establishes a fund for psychological stability screening for candidates for certification as law enforcement officers.
- Transfers money from the drug forfeiture fund to the psychological stability screening fund.
- Allows the police standards and training council to reimburse the state or a political subdivision for psychological stability screening for candidates for certification as law enforcement.

These sections establish the psychological stability screening fund and transfers \$100,000 from the drug forfeiture fund to the psychological stability screening fund. This may reduce other distributions from the drug forfeiture fund to: the government agency responsible for seizure, the special fund at the Department of Health and Human Services, and drug forfeiture revolving fund with in the Department of Justice.

**Section 25 prohibits use of chokehold by law enforcement except to protect themselves or another from an imminent use of deadly force:**

This section is new language. No fiscal impact is anticipated.

**AGENCIES CONTACTED:**

Judicial Branch, New Hampshire Association of Counties, and Department of Safety