

**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**

03/08/2018 0958s  
19Apr2018... 1253h  
19Apr2018... 1577h  
05/23/2018 2017CofC  
05/23/2018 2122EBA

2018 SESSION

18-2977  
04/03

SENATE BILL        ***556-FN***

AN ACT            relative to changes in bail procedures and procedures for annulment of a criminal record.

SPONSORS:        Sen. Feltes, Dist 15; Sen. Bradley, Dist 3; Sen. French, Dist 7; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5; Sen. Lasky, Dist 13; Sen. Reagan, Dist 17; Sen. Watters, Dist 4; Sen. Woodburn, Dist 1; Rep. Rouillard, Hills. 6; Rep. Eaton, Ches. 3; Rep. Berch, Ches. 1; Rep. Cushing, Rock. 21; Rep. Welch, Rock. 13

COMMITTEE:      Judiciary

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AMENDED ANALYSIS

This bill revises the procedures for the granting of bail, amends the procedure for annulment of violations and class B misdemeanors depending on the date of conviction, and amends the requirements for demonstrating indigency for the purpose of annulment of a criminal record. The bill also establishes a commission on pretrial detention, pretrial scheduling, and pretrial services.

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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                      Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Eighteen*

AN ACT            relative to changes in bail procedures and procedures for annulment of  
a criminal record.

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

1            366:1 Short Title. This act shall be known as the Criminal Justice Reform and  
2 Economic Fairness Act of 2018.

3            366:2 Bail and Recognizances; Release of a Defendant Pending Trial. RSA 597:2 is  
4 repealed and reenacted to read as follows:

5            597:2 Release of a Defendant Pending Trial.

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

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

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

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

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

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

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

22                    (c) Detained.

23            III.(a) The court shall order the pre-arraignment or pretrial release of the person  
24 on his or her personal recognizance, or upon execution of an unsecured appearance  
25 bond in an amount specified by the court, or cash or corporate surety bail, subject to the  
26 condition that the person not commit a crime during the period of his or her release, and

**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**  
**- Page 2 -**

1 subject to such further condition or combination of conditions that the court may  
2 require unless the court determines by a preponderance of the evidence that such  
3 release will not reasonably assure the appearance of the person as required. A person  
4 who the court determines to be a danger to the safety of that person or the public shall  
5 be governed by the provisions of paragraph IV, except that such dangerousness  
6 determination shall not be based solely on evidence of drug or alcohol addiction or  
7 homelessness.

8 (b) In determining the amount of the unsecured appearance bond or cash or  
9 corporate surety bail under subparagraph II(a), if any, the court:

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

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

15 (3) Shall consider whether the person is the sole income producer for  
16 dependents.

17 (c) For purposes of the court's determination under this paragraph, evidence  
18 of homelessness or a lack of a mailing address by itself shall not constitute prima facie  
19 evidence of a lack of reasonable assurance that a person will not appear.

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

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

26 (1) The condition that the person not commit a crime during the period of  
27 release; and

28 (2) Such further condition or combination of conditions that the court  
29 determines will reasonably assure the appearance of the person as required, which may  
30 include the condition that the person:

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

36 (B) Furnish bail for his or her appearance by recognizance with  
37 sufficient sureties or by deposit of moneys equal to the amount of the bail required as

**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**  
**- Page 3 -**

1 the court may direct; and

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

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

11 IV.(a) If a person is charged with any criminal offense, an offense listed in RSA  
12 173-B:1, I or a violation of a protective order under RSA 458:16, III, or after arraignment,  
13 with a violation of a protective order issued under RSA 173-B, the court may order  
14 preventive detention without bail, or, in the alternative, may order restrictive  
15 conditions including but not limited to electronic monitoring and supervision, only if  
16 the court determines by clear and convincing evidence that release will endanger the  
17 safety of that person or the public. The court may consider the following conduct as  
18 evidence of posing a danger, including, but not limited to:

19 (1) Threats of suicide.

20 (2) Acute depression.

21 (3) History of violating protective orders.

22 (4) Possessing or attempting to possess a deadly weapon in violation of an  
23 order.

24 (5) Death threats or threats of possessiveness toward another.

25 (6) Stalking, as defined in RSA 633:3-a.

26 (7) Cruelty or violence directed toward pets.

27 V. A no-contact provision contained in any bail order shall not be construed to:

28 (a) Prevent counsel for the defendant from having contact with counsel for  
29 any of the individuals protected by such provision; or

30 (b) Prevent the parties, if the defendant and one of the protected individuals  
31 are parties in a domestic violence or marital matter, from attending court hearings  
32 scheduled in such matters or exchanging copies of legal pleadings filed in court in such  
33 matters.

34 VI. If a person is charged with violation of a protective order issued under RSA  
35 173-B or RSA 633:3-a, the person shall be detained without bail pending arraignment  
36 pursuant to RSA 173-B:9, I(a).

37 VII. In a release order issued pursuant to this section, the court shall include a

**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**  
**- Page 4 -**

1 written statement that sets forth:

2 (a) All of the conditions to which the release is subject, in a manner  
3 sufficiently clear and specific to serve as a guide for the person's conduct; and

4 (b) The provisions of RSA 641:5, relative to tampering with witnesses and  
5 informants.

6 VIII. A person charged with an offense who is, or was at the time the offense was  
7 committed, on release pending trial for a felony or misdemeanor under federal or state  
8 law, release pending imposition or execution of sentence, appeal of sentence or  
9 conviction, or completion of sentence, for any offense under federal or state law; or  
10 probation or parole for any offense under federal or state law, except as provided in RSA  
11 597:1-d, III, may be detained for a period of not more than 72 hours from the time of his  
12 or her arrest, excluding Saturdays, Sundays and holidays. The law enforcement agency  
13 making the arrest shall notify the appropriate court, probation or parole official, or  
14 federal, state, or local law enforcement official. Upon such notice, the court shall direct  
15 the clerk to notify by telephone the department of corrections, division of field services,  
16 of the pending bail hearing. If the department fails or declines to take the person into  
17 custody during that period, the person shall be treated in accordance with the  
18 provisions of law governing release pending trial. Probationers and parolees who are  
19 arrested and fail to advise their supervisory probation officer or parole officer in  
20 accordance with the conditions of probations and parole may be subject to arrest and  
21 detention as probation and parole violators.

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

29 X. A person detained by a circuit court has the right to:

30 (a) In the first instance, a hearing in circuit court within 36 hours after the  
31 filing of the motion, excluding weekends and holidays on a motion to reconsider the  
32 original detention order; and

33 (b) A decision upon a de novo appeal, pursuant to RSA 597:6-e, II, to the  
34 superior court within 36 hours of the filing of the appeal, excluding weekends and  
35 holidays.

36 366:3 Bail and Recognizances; Review and Appeal of Release or Detention Order.  
37 Amend RSA 597:6-e, II to read as follows:

**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**  
**- Page 5 -**

1           II. *Subject to RSA 597:2, X*, the person or the state may file with the superior  
2 court a motion for revocation of the order or amendment of the conditions of release set  
3 by a municipal or district court, by a justice, or by a bail commissioner. The motion  
4 shall be determined promptly. However, no action shall be taken on any such motion  
5 until the moving party has provided to the superior court certified copies of the  
6 complaint, affidavit, warrant, bail slip, and any other court orders relative to each  
7 charge for which a release or detention order was issued by a justice, or a bail  
8 commissioner. In cases where a district court justice has made a finding, pursuant to  
9 RSA 597:2, [III-a] *IV* that the person poses a danger to another, the superior court shall,  
10 after notification to both parties, the police department that brought the charges in  
11 district court, and the victim, conduct a hearing and make written findings supporting  
12 any modifications and reasons for new conditions or changes from the district court  
13 order. The reviewing court shall take into consideration the district court's written  
14 findings, orders, pleadings, or transcript when making a modification.

15           366:4 Annulment of Criminal Records. Amend RSA 651:5, II to read as follows:

16           II. *For an offense disposed of before January 1, 2019 and any offense not subject*  
17 *to paragraph II-a*, any person whose arrest has resulted in a finding of not guilty, or  
18 whose case was dismissed or not prosecuted, may petition for annulment of the arrest  
19 record or court record, or both, at any time in accordance with the provisions of this  
20 section. Any person who was convicted of a criminal offense whose conviction was  
21 subsequently vacated by a court may petition for annulment of the arrest record or  
22 court record, or both, in accordance with the provisions of this section. *Nothing in this*  
23 *paragraph shall limit the provisions of subparagraph XI(b).*

24           366:5 New Paragraph; Annulment of Criminal Records. Amend RSA 651:5 by  
25 inserting after paragraph II the following new paragraph:

26           II-a.(a) For an offense disposed of on or after January 1, 2019, any person whose  
27 arrest has resulted in a finding of not guilty on all charges that resulted from the arrest,  
28 or whose case was dismissed or not prosecuted, shall have the arrest record and court  
29 record annulled:

30                   (1) Thirty days following the finding of dismissal if an appeal is not taken  
31 under RSA 606:10 or finding of not guilty; or

32                   (2) Upon final determination of the appeal affirming the finding of  
33 dismissal if an appeal is taken under RSA 606:10.

34                   (b) For an offense disposed of on or after January 1, 2019, any person who was  
35 convicted of a criminal offense whose conviction was subsequently vacated by a court  
36 shall have the arrest record and court record annulled. Nothing in this paragraph shall  
37 limit the provisions of subparagraph XI(b).

CHAPTER 366  
SB 556-FN - FINAL VERSION  
- Page 6 -

1       366:6 Annulment of Criminal Records. Amend RSA 651:5, III(a) and (b) to read as  
2 follows:

3           (a)(1) For a violation *with a conviction date prior to January 1, 2019 or a*  
4 *violation with a conviction date on or after January 1, 2019 that was not the highest*  
5 *offense of conviction*, one year, unless the underlying conviction was for an offense  
6 specified under RSA 259:39.

7           (2) *For a violation with a conviction date on or after January 1, 2019*  
8 *where the violation was the highest offense of conviction, unless the underlying*  
9 *conviction was for an offense specified under RSA 259:39, or another violation for which*  
10 *there is an enhanced penalty for a subsequent conviction, one year after the person has*  
11 *completed all the terms and conditions of the sentence. Upon completion of a petition by*  
12 *the person stating that the conviction is eligible for annulment, the court shall submit a*  
13 *notice of its determination to the person convicted of the offense and to the prosecutor.*  
14 *The prosecutor shall have 20 days from the date of receipt of the notice to object to the*  
15 *annulment on the ground that the offense is not eligible for annulment or that the*  
16 *person has not completed all the terms and conditions of the sentence. If the prosecutor*  
17 *fails to timely object or the court denies the prosecutor's objection, the court shall annul*  
18 *the conviction.*

19           (b)(1) For a class B misdemeanor *with a conviction date prior to January 1,*  
20 *2019 or a class B misdemeanor with a conviction date on or after January 1, 2019 that*  
21 *was not the highest offense of conviction*, except as provided in subparagraphs (f) and  
22 (h), 2 years.

23           (2) *For a class B misdemeanor with a conviction date on or after January*  
24 *1, 2019 where the class B misdemeanor was the highest offense of conviction, except as*  
25 *provided in subparagraphs (f) and (h), 2 years after the person has completed all the*  
26 *terms and conditions of the sentence. Upon completion of a petition by the person*  
27 *stating that the class B misdemeanor is eligible for annulment, the court shall submit a*  
28 *notice of its determination to the person convicted of the offense and to the prosecutor.*  
29 *The prosecutor shall have 20 days from the date of receipt of the notice to object to the*  
30 *annulment on the ground that the offense is not eligible for annulment or that the*  
31 *person has not completed all the terms and conditions of the sentence. If the prosecutor*  
32 *fails to timely object or the court denies the prosecutor's objection, the court shall annul*  
33 *the conviction.*

34       366:7 Annulment of Criminal Records. Amend RSA 651:5, IX to read as follows:

35           IX. When a petition for annulment is timely brought, the court shall require the  
36 department of corrections to report to the court concerning any state or federal  
37 convictions, arrests, or prosecutions of the petitioner and any other information which

**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**  
**- Page 7 -**

1 the court believes may aid in making a determination on the petition. The department  
2 shall charge the petitioner a fee of \$100 to cover the cost of such investigation unless the  
3 petitioner demonstrates that he or she is indigent, or has been found not guilty, or the  
4 case has been dismissed or not prosecuted in accordance with paragraph II. The  
5 department of safety shall charge the successful petitioner a fee of \$100 for researching  
6 and correcting the criminal history record accordingly, unless the petitioner  
7 demonstrates that he or she is indigent, or has been found not guilty, or the case has  
8 been dismissed or not prosecuted in accordance with paragraph II. The court shall  
9 provide a copy of the petition to the prosecutor of the underlying offense and permit  
10 them to be heard regarding the interest of justice in regard to the petition. *The*  
11 *petitioner's request for a court filing fee waiver shall be submitted on a form supplied by*  
12 *the court.*

13 366:8 Annulment of Criminal Records. Amend RSA 651:5, X(d) to read as follows:

14 (d) Upon payment of a fee not to exceed \$100 to the state police, ***and subject to***  
15 ***the provisions of subparagraph XI(b)***, the state police criminal records unit shall remove  
16 the annulled criminal record and inform all appropriate state and federal agencies of  
17 the annulment, ***unless the petitioner demonstrates that he or she is indigent, or has been***  
18 ***found not guilty, or the case has been dismissed or not prosecuted in accordance with***  
19 ***paragraph II. The state police shall grant the fee waiver request where the petitioner***  
20 ***demonstrates indigency by including with the fee waiver request an affidavit listing the***  
21 ***petitioner's monthly net income and that of his or her spouse, and the assets of the***  
22 ***petitioner and his or her spouse. The fee waiver request form used shall be substantially***  
23 ***similar to the forms for waiver of fees and costs in the superior courts.***

24 366:9 Annulment of Criminal Records. Amend RSA 651:5, III(d)-(e) to read as follows:

25 (d) For a class B felony except as provided in ~~[subparagraph]~~ ***subparagraphs***  
26 ***(g) and (i)***, 5 years.

27 (e) For a class A felony, ***except as provided in subparagraph (i)***, 10 years.

28 366:10 Annulment of Criminal Records. Amend RSA 651:5, III(i) to read as follows:

29 (i) For a class A misdemeanor ***or felony offense*** under RSA 318-B:26, II~~[(d) or~~  
30 ~~(e)]~~, 2 years.

31 366:11 New Subdivision; Commission on Pretrial Detention, Pretrial Scheduling, and  
32 Pretrial Services. Amend RSA 597 by inserting after section 42 the following new  
33 subdivision:

34 Commission on Pretrial Detention, Pretrial Scheduling, and Pretrial Services

35 597:43 Commission Established.

36 I. There is established a commission on pretrial detention, pretrial scheduling,  
37 and pretrial services. The commission shall consist of the following members:



**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**  
**- Page 8 -**

- 1           (a) One member of the senate, appointed by the senate president.
- 2           (b) Three members of the house of representatives, appointed by the speaker  
3 of the house of representatives.
- 4           (c) The attorney general, or designee.
- 5           (d) The chief justice of the New Hampshire superior court, or designee.
- 6           (e) The chief administrative judge of the New Hampshire circuit court, or  
7 designee.
- 8           (f) The executive director of the American Civil Liberties Union of New  
9 Hampshire, or designee.
- 10          (g) The executive director of the New Hampshire Public Defender, or  
11 designee.
- 12          (h) The president of the New Hampshire Association of Chiefs of Police, or  
13 designee.
- 14          (i) The president of the New Hampshire Police Association, or designee.
- 15          (j) One superintendent of a New Hampshire county correctional facility,  
16 appointed by the governor.
- 17          (k) One member from the public with experience in law enforcement,  
18 appointed by the governor.

19           II. The commission shall:

- 20           (a) Review and provide recommendations on risk assessment, dangerousness  
21 determinations, pretrial services, and funding for pretrial services in advance of the  
22 2019-2021 state biennial operating budget.
- 23           (b) Review and provide recommendations on cost-effective court  
24 communications and scheduling of pretrial matters.
- 25           (c) Solicit testimony and input from the general public.

26           III. Legislative members of the commission shall receive mileage at the  
27 legislative rate when attending to the duties of the commission. The members of the  
28 commission shall elect a chairperson from among the members. The first meeting of the  
29 commission shall be called by the senate member. The first meeting of the commission  
30 shall be held within 45 days of the effective date of this section. Seven members of the  
31 commission shall constitute a quorum.

32           IV. The commission shall report its findings and any recommendations for  
33 proposed legislation to the president of the senate, the speaker of the house of  
34 representatives, the senate clerk, the house clerk, the governor, and the state library on  
35 or before November 1, 2018.

36           366:12 Repeal. RSA 597:43, relative to the commission on pretrial detention, pretrial  
37 scheduling, and pretrial services, is repealed.

**CHAPTER 366**  
**SB 556-FN - FINAL VERSION**  
**- Page 9 -**

1       **366:13 Effective Date.**

2           **I. Sections 1-10 of this act shall take effect 60 days after its passage.**

3           **II. Section 12 of this act shall take effect November 1, 2018.**

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

**Approved: July 02, 2018**

**Effective Date:**

**I. Sections 1-10 shall take effect August 31, 2018.**

**II. Section 12 shall take effect November 1, 2018.**

**III. Remainder shall take effect July 2, 2018.**

