

2020 - 006



November 8, 2021

Dear NH Supreme Court Advisory Committee on Rules,

The New Hampshire Coalition Against Domestic and Sexual Violence writes in opposition of the proposed amendment to New Hampshire Rule of Criminal Procedure 12, which prevents a judge from considering a defendant's criminal history if the state does not provide it to the defense in advance of a bail hearing. If enacted, this amendment would create grave safety risks for victims of the most dangerous patterns of criminal offenses in our state.

At a time when we should be working to enhance protections for victims, this proposal weakens them and further jeopardizes victims' safety. As calls to New Hampshire's crisis lines soared in recent months, domestic and sexual violence victims shared stories of a system that failed to keep them safe, and a system that they have lost faith in after offenders who harmed them time and time again faced little to no accountability.

A minority of defendants are detained after an arrest. Those who are held face the most serious of criminal charges and often present a clear danger to victim(s) and the larger community. The proposed change to Rule 12 could potentially limit the amount of information at a judge's disposal to determine a defendant's bail and, in turn, open the door to greater safety risks for victims of domestic violence, stalking, and sexual assault, who are among the most vulnerable to revictimization.

At a defendant's arraignment, the prosecutor must present a bail argument with input from the victim(s) and the investigating agency, and there is limited time to do this. The Coalition is greatly concerned that by requiring the state to document and provide timely notice to defense counsel of the defendant's criminal history that valuable resources will be stretched too thin in those critical hours between arrest and arraignment. It is essential that victims are informed at every step and have adequate input as mandated through New Hampshire's Crime Victim Bill of Rights.

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A bail decision can have life or death consequences for a victim, particularly in a domestic violence case. There have been too many instances of defendants who, within hours of release, violate no contact orders, return to the victim's place of residence, and commit further, more heinous crimes. We saw this in Nashua in December 2020 when Jency Diaz (226-2020-CR-00957) was released on domestic violence charges and later returned to the victim's apartment, where he brutally beat her and sexually assaulted her, resulting in felony charges.

Any effort to change statewide policy must have victim safety at its center, and this proposed rule change does not do that. Of greatest concern is that this amendment could have lethal consequences for those who are at greatest risk of being killed in our state. Domestic violence escalates in severity and frequency over time. Abusers who are capable of committing the ultimate act of domestic violence, murder, often demonstrate a documented pattern of abuse. To set appropriate bail, the judge must have access to this critical information.

According to the 2018-2019 New Hampshire Domestic Violence Fatality Review Committee Biennial Report, 21 people lost their lives to domestic violence homicide in the Granite State, representing 45% of all homicides during that timeframe. This is a dramatic increase from the prior reporting period, illustrating that domestic violence remains one of the most prevalent legal and social problems in our state. In fact, on average, domestic violence is a factor in 77% of state's murder/suicides and 51% for domestic violence homicides.

Defendants have the right to file a motion for a bail hearing at any point after their arrest and initial arraignment, where the facts of the case and the record can be vetted and argued. A defendant should never be released because there was relevant and available information that the judge was prohibited by court rule from knowing. Bail commissioners should not have more access to complete criminal histories than judges.

We are deeply troubled to see this proposal being advanced and urge you to not adopt this rule change, which would severely compromise the safety of our most vulnerable citizens who have been impacted by crime.

Sincerely,



Lyn M. Schollett  
Executive Director