

2020-006

**From:** Karinne Brobst [mailto:kbrobst@milford.nh.gov]  
**Sent:** Friday, July 23, 2021 11:39 AM  
**To:** RulesComment <RulesComment@courts.state.nh.us>  
**Subject:** Comment on Rule 12 Change: Defendant's Criminal History

Good morning,

This proposed rule just recently came to my attention. I must strongly urge you to reconsider. This rule would result in an impossible requirement on the State. The rule requires that the State provide a copy of a criminal history of the defendant to the defendant or his/her counsel prior to arraignment, or be prohibited from utilizing the criminal history at the hearing. This is impossible.

Here is a typical scenario: A defendant is arrested and incarcerated overnight with a morning arraignment. At court that morning, the State (sometimes in person or by phone) represents the defendant's criminal history to the judge to justify a detention. If the defendant has been incarcerated in jail overnight, the State has NO ability to provide the criminal history to anyone but the court orally the next morning. Criminal histories are subject to confidentiality rules. I cannot simply fax a history to the jail. They are not an authorized party. I cannot email them, nor would a defendant have access to email in jail. Practically, this means that someone who saw a Bail Commissioner and who was held on any cash bail can never have their criminal history utilized in a bail argument to the judge. This is unacceptable.

In a scenario with an attorney: I may find out who represents the defendant DURING the hearing. I don't often get advance notice. Criminal histories can only be mailed or faxed. If I am in the courthouse having a bail argument and a defense attorney is on the phone or video, and that is when I learn of the representation, I cannot provide the criminal history.

Basically, this amendment would prohibit criminal history from ever being utilized in a bail hearing. It would result in the release of danger offenders with lengthy criminal histories. Moreover, the amendment itself is unnecessary. The defendant knows his/her criminal history.

On behalf of all prosecutors and victims of crime, I strongly urge you to reconsider.

Thank you,

Karinne

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