

New Hampshire Bail Laws

1. Applicable Statutes.

- A. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 597. BAIL AND RECOGNIZANCES § 597:7 – 36.
- B. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 598-A. PROFESSIONAL BONDSMEN § 598-A:1 – 6.

2. Licensing Requirements for Agents.

- A. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 597. BAIL AND RECOGNIZANCES § 597:7-b

Sets forth certification and registration requirements for Bail Agents and Recovery Agents.

- "Bail agent" means any person appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and who receives a premium.
- "Recovery agent" means a person who meets the requirements of paragraph II of this section and who is offered or given any compensation by a bail agent or surety in exchange for assisting the bail agent or surety in apprehending or surrendering any defendant, or keeping the defendant under necessary surveillance.
- (Paragraph II) Any person who operates as a recovery agent in this state, excluding licensed private detectives, shall be trained and certified through a program approved by the Professional Bail Agents of the United States and shall register annually with the secretary of state. The secretary of state shall issue to each registered recovery agent proof of such registration.
- Effective July 1, 2000, each bail agency operating in this state shall annually provide to the secretary of state proof of liability insurance coverage in the amount of \$300,000 for bail recovery activities of the agency's bail agents and bail recovery agents.
- This proof of insurance coverage shall be provided before the agency's bail agents are licensed or re-licensed, and before the agency's bail recovery agents are registered or reregistered.
- Bail recovery agents acting as independent contractors shall provide proof of liability insurance coverage in the amount of \$300,000 to the secretary of state before registration or re-registration.
- Any person who operates as a recovery agent in this state without meeting such certification, insurance, and registration requirements shall be guilty of a class A misdemeanor.

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B. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 598-A. PROFESSIONAL BONDSMEN § 598-A: 1 Approval and Registration.

- No person proposing to become bail or surety in a criminal case for hire or reward, either received or to be received, shall be accepted as such unless he shall have been approved and registered as a professional bondsman by the secretary of state or his designee; provided, however, no person proposing to become bail or surety in a criminal case in any calendar year after having become bail or surety in criminal cases on 5 separate occasions in said year shall be accepted thereafter during that year as bail or surety unless he shall have been approved and registered as a professional bondsman as provided in this section.
- § 598-A: 1-a Fees.
 - A person proposing to become bail or surety and registered as a professional bondsman shall pay to the secretary of state or his designee an initial application fee of \$400; the fee shall be deposited in the general fund by the state treasurer as unrestricted revenue.
 - Thereafter, an annual renewal fee of \$100 for the registration in each county of the state where a professional bondsman seeks to post bail shall be due and payable to the secretary of state or his designee on December 30 for the ensuing year. The fee shall be deposited in the general fund by the state treasurer as unrestricted revenue.
- § 598-A: 2 Revocation.
 - Approval and registration under this chapter may be revoked at any time by the secretary of state or his designee and shall be revoked in case such a bondsman fails for 30 days after demand to satisfy in full a judgment recovered under RSA 597:33 (see #6 on this outline).
- § 598-A: 6 Exceptions.
 - The provisions of this chapter do not apply to a fidelity, guaranty or surety company duly authorized to transact business in New Hampshire nor any duly authorized agent thereof. A person shall be deemed to have become bail or surety if he becomes such:
 - (1) for a person in respect to a single offense; or
 - (2) for a person in respect to 2 or more offenses committed at the same time or arising out of the same transaction or course of conduct wherefore he at different times offers bail or surety; or
 - (3) for 2 or more persons at the same time offering bail or surety in respect to offenses committed jointly or in a common course of conduct.
 - (4) Becoming bail or surety for the same person or persons in subsequent proceedings in connection with prosecution for the same offense or offenses shall not be deemed an additional occasion or occasions.

3. Notice of Forfeiture

A. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 597. BAIL AND RECOGNIZANCES

§ 597:31 Forfeiture proceedings may be initiated immediately.

- Upon default for failure to appear, the recognizance shall be declared forfeited, and the state may cause proceedings to be had immediately for the recovery of such forfeiture.

§ 597:36 Deals with forfeiture declaration.

- In actions brought upon recognizances taken in criminal prosecutions, it shall be sufficient to set forth in the writ the substance of the recognizance and the time and place at which the same was declared forfeited, without setting forth the complaint or indictment or any subsequent proceedings thereon.

4. Allotted Time between Forfeiture Declaration and Payment Due Date.

- #### A.
- There appears to be no required grace period between forfeiture declaration and actual forfeiture in New Hampshire. While sureties are required to receive notice of forfeiture, there is no defined period allowing a surety to produce the accused or suffer forfeiture. This point seems to be illustrated by *State v. Moccia* (see #9 below).

5. Forfeiture Defenses.

A. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 597. BAIL AND RECOGNIZANCES.

Provides several conditions for discharging bail from liability.

- § 597:27 Surrender, in Court.
 - A surety for the appearance of a party or witness may be discharged by order of the superior court from further liability upon surrendering the party in open court, during the pendency of the original cause and before trial, on payment of the costs of any proceeding against them, and the principal shall be committed unless again recognized.
- § 597:28 Surrender, to Jailer.
 - Sureties may be discharged before forfeiture of the recognizance by committing the principal to the jail of the county, by leaving with the jailer a certified copy of the order to recognize and of the names of the bail, and a certificate of the bail thereon that they have committed the principal in discharge of their liability as bail, and by giving written notice thereof to the attorney general or county attorney.
- § 597:30 Excusing Surrender.
 - When the sureties in a recognizance, without their fault, are prevented from surrendering their principal by an act of God or of the government of the state or of the United States, or by sentence of law, the superior court, on petition and notice thereof to the county

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commissioners and state's counsel, may discharge them on such terms as may be deemed just.

A. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 597. BAIL AND RECOGNIZANCES § 597:32

Deals with striking a default forfeiture judgement.

- Any court, for good cause, may strike off a default forfeiture or order it to be struck off at a future day, upon a substantial compliance with the condition.

6. Remission.

NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 597. BAIL AND RECOGNIZANCES §597:33

Court discretion in forfeiture judgment.

- The superior court may render judgment for the whole amount of any forfeited recognizance and interest and costs, or for such part thereof as, after hearing counsel, the court may think proper, according to any special circumstances in evidence affecting the case or the party liable.

7. Bail Agent's Arrest Authority.

A. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 612. UNIFORM CRIMINAL EXTRADITION LAW §612:18

Power of arrest for recovery of bonds.

- If a prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

8. Other Noteworthy Provisions.

A. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 597. BAIL AND RECOGNIZANCES General Provisions § 597:7-b Bail Agents and Recovery Agents; Notification to Local Law Enforcement Required.

- A bail agent or recovery agent searching for a person who has violated conditions of release shall notify a municipality's chief law enforcement officer if the search is to be conducted in the municipality's jurisdiction.

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- A bail agent or recovery agent who violates the provisions of paragraph I shall be guilty of a misdemeanor.
- B. NEW HAMPSHIRE STATUTES ANNOTATED TITLE LIX. PROCEEDINGS IN CRIMINAL CASES CHAPTER 598-A. PROFESSIONAL BONDSMEN § 598-A:5

Penalty for operation as unregistered bondsman and 5 time limit on surety actions per year.

- Any unregistered person receiving hire or reward for his services as bail or surety in any criminal case, any unregistered person becoming bail or surety in any criminal case in any calendar year after having become bail or surety in criminal cases on 5 separate occasions in said year, and any professional bondsman violating any provision of the rules established hereunder for such bondsmen shall, if a natural person, be guilty of a misdemeanor, and, if another person, a felony.
- C. NEW HAMPSHIRE RULES OF COURT RULES OF THE DISTRICT AND MUNICIPAL COURTS OF THE STATE OF NEW HAMPSHIRE CRIMINAL RULES, RULE 2.2 BAIL AND NOTICE TO DEFENDANT

No Attorney to Be Bail. No attorney shall be bail or surety in any case pending before the Court.

9. Noteworthy State Appellate Decisions.

- A. The STATE of New Hampshire v. Nicholas MOCCIA et al.

Supreme Court of New Hampshire.

May 5, 1980.

- Bail bondsman sought to overturn order of Trial Court, Rockingham County, for forfeiting posted bail. The Supreme Court held that:
 - (1) even though bail bondsman might have executed a new bond with principals during pendency of their appeal, the Superior Court was not obligated to notify bondsman of conviction of his principals and failure to do so did not entitle bondsman to discharge on the bonds, and
 - (2) if bondsman had no notice of principals' trial date and thus no opportunity to cause principals to appear, default should be stricken and bondsman given reasonable time in which to bring the principals before the court, but, after notice, should bondsman fail in his task, court could take appropriate steps to declare a forfeiture. The case was reversed and remanded.

B. John DOE et al. v. Thomas F. O'BRIEN et al.

Supreme Court of New Hampshire.

Argued Jan. 5, 1966.

Decided Feb. 28, 1966.

- The Supreme Court held that insurer was not properly licensed to serve as a professional bondsman where it had not complied with statute pertaining to registration of professional bondsmen with the clerk of court even though insurer was licensed under another statute as a foreign insurance company to transact business as a surety. The failure of clerk of court to accept surety on the defendant's bail bond for reason that surety was not registered as a professional bondsman was not a de facto deprivation of defendant's right to bail.

10. Bounty Hunter Provisions.

At this time, there appear to be no specific regulations for "Bounty Hunters" in the New Hampshire statutes beyond those in 2.A. above.