

**Definition of sentences in New Hampshire courts:**

**Class A felonies** are crimes for which the maximum penalty, exclusive of fine, is imprisonment in excess of 7 years.

examples:

- murder,
- manufacture or sale of serious drugs such as cocaine or heroine,
- possession of cocaine or heroine (if second offense),
- armed robbery,
- manslaughter (causing the death of another under the influence of extreme mental or emotional disturbance caused by extreme provocation or recklessly = imprisonment for a term of not more than 30 years),
- theft = a single offense of larceny, embezzlement, false pretense, extortion, blackmail, receiving stolen property if the value exceeds \$1,000, or the property stolen is a firearm, or the accused is armed with a deadly weapon;
- caregiver who purposely causes serious bodily injury to an elderly, disabled, or impaired adult by neglect;
- first degree assault (purposely causing serious bodily injury to another)

**Class B felonies** are crimes for which the maximum penalty, exclusive of fine, is imprisonment in excess of one year but less than 7 years.

examples:

- manufacture or sale of less than 1 ounce of marijuana,
- possession of cocaine or heroine first offense,
- aggravated DWI causing a collision resulting in serious bodily injury to the person or another,
- a fourth or subsequent DWI offense,
- robbery (involving force or threat of force),
- theft if the value of the property or services is more than \$500 but not more than \$1000, or the accused has been twice before convicted of theft of property or services, as a felony or class A

misdemeanor, or the property or services stolen are from 3 separate business establishments within a 72-hour period,

- caregiver who knowingly or recklessly causes serious bodily injury to an elderly, disabled, or impaired adult by neglect
- second degree assault = knowingly or recklessly causing serious bodily injury to another

**Class A misdemeanor** is any crime for which the maximum penalty, exclusive of fine, is imprisonment not in excess of one year

examples:

- convicted of a 3<sup>rd</sup> DWI, drivers license will be suspended indefinitely and will not be restored for a minimum of 5 years. Sentenced to a minimum of 180 days in the county correctional facility followed by a 28 day residential treatment program paid for at the convicted driver's expense. The court may also order a drug and or alcohol treatment program and may require the convicted driver to submit random urinalysis or other tests that the court deems appropriate.

**Class B misdemeanor** is any crime for which the maximum penalty does not include any term of imprisonment or any fine in excess of the maximum provided for a class B misdemeanor in RSA 651:2

examples:

- possession of small amount of marijuana;
- DWI (court may reduce the conviction to a violation at least one year after the date of the conviction)

**Misdemeanors (unspecified class)**

Examples:

- Simple assault: purposely or knowingly causing bodily injury or unprivileged physical contact to another; or recklessly causing bodily injury to another
- Illegal steroids use or possession
- theft if the value is less than \$500

**A violation** is any offense defined outside of this code for which there is no other penalty provided other than a fine or fine and forfeiture or other civil penalty.

Examples of violations:

- Speeding and parking violations

(Note: sentences for drug infractions can be doubled when occurring within 1000 feet of school)

*Other terms:*

**PAROLE** RSA 651-A:6 Terms of Release. – A prisoner may be released on parole upon the expiration of the minimum term of his sentence, minus any credits received..., plus the disciplinary period added to such minimum..., provided that there shall appear to the adult parole board..., to be a reasonable probability that he will remain at liberty without violating the law and will conduct himself as a good citizen. Any prisoner so released shall be given a permit by the board to be at liberty from prison during the unexpired portion of the maximum term of his sentence.

**PROBATION** suspension of the sentence of a convicted offender and giving the offender freedom during good behavior under the supervision of a probation officer. NH law determines the length of probation, and a risk assessment determines the amount of supervision that probation/parole officers will exercise. Violation of probation conditions can result in immediate incarceration.

**BAIL** Security, usually a sum of money, exchanged for the release of an arrested person as a guarantee of that person's appearance for trial. When an offender is unable to post the bail set by the court, the offender may be sent to the county House of Corrections to await trial.

From a March 7, 2010 article in the NH Sunday News:

“**SB 500** [which became law in 2010] includes plans to release most non-violent offenders after they have served 120 % of their minimum sentence, assuming good behavior. The aim is to provide gradual transitions to freedom, counseling and substance abuse treatment when appropriate, and to cut down on the current recidivism rate, which sees

nearly half of all paroled inmates return to prison. That (say supporters of the bill) will save on the \$30K per head per year cost of housing prisoners.” But probation and parole officers are warning that the bill doesn't contain the money needed to give released inmates the support intended, so inmates will be jobless, homeless, and on their way back to crime.

**SB 52**, passed in the following legislature, essentially gutted the provisions of SB 500.

**MINIMUM SENTENCE** RSA 651:2 II-e To the minimum sentence of every person who is sentenced to imprisonment for a maximum of more than one year shall be added a disciplinary period equal to 150 days for each year of the minimum term of the sentence, to be prorated for any part of the year. The presiding justice shall certify, at the time of sentencing, the minimum term of the sentence and the additional disciplinary period required under this paragraph. This additional disciplinary period may be reduced for good conduct as provided in RSA 651-A:22. There shall be no addition to the sentence under this section for the period of pre-trial confinement for which credit against the sentence is awarded pursuant to RSA 651-A:23.

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**Sample sentences: Drugs (as of 2009)**

Any person who manufactures, sells, prescribes, administers, or transports, or possesses with intent to sell, dispense, or compound any controlled drug, (then, based on kind and amount of drug) 1<sup>st</sup> offense for larger amounts of cocaine or heroine, not more than 30 years. Smaller amounts same drugs not more than 20 years. Marijuana less than 1 oz, not more than 3 years.

Any person who knowingly or purposely obtains, purchases, transports, or possesses actually or constructively, or has under his control, any controlled drug. First offense class B felony for more serious drugs. Second offense class A felony for more serious drugs. For small amount of marijuana, first offense is a misdemeanor.

Any person who manufactures, sells, prescribes, administers, dispenses, or possesses with intent to sell, dispense, or compound any controlled drug or

its analog, in or on or within 1,000 feet of a public or private elementary, vocational, or secondary school., punishment is up to twice that it would otherwise be.

Any person who prescribes, sells, provides or distributes anabolic steroids to another person for purposes other than treatment of a medical problem or injury. First offense is class B felony.

Any person who uses or possesses with intent to use anabolic steroids for purposes other than treatment of a medical problem or injury. First offense is misdemeanor.

### **Sample sentences: Driving While Intoxicated**

Third Drunk Driving Conviction      If you are convicted of a 3rd DWI in New Hampshire your driver's license will be suspended indefinitely and will not be restored for a minimum of 5 years. You will also be sentenced to a minimum of 180 days in the county correctional facility followed by a 28 day residential treatment program paid for at the convicted drivers expense. The court may also order a drug and or alcohol treatment program and may require the convicted driver to submit random urinalysis or other tests that the court deems appropriate.

Any person who is convicted of aggravated DWI and causes a motor vehicle, boating, or OHRV collision resulting in serious bodily injury, as defined in RSA 625:11, VI, to the person or another shall be guilty of a class B felony;

(c) For a fourth or subsequent DWI offense, any person shall be guilty of a **felony**, and the person's driver's license or privilege to drive shall be revoked indefinitely and the person shall not petition for eligibility to reapply for a driver's license for at least 7 years.

(d) For a third or subsequent offense when any prior offense under this paragraph is **negligent homicide** the person's driver's license or privilege to drive shall be revoked indefinitely and the person shall not petition for eligibility

to reapply for a driver's license as provided in subparagraph (b)(1) for at least 10 years.

### **Other crimes:**

**Robbery** (involving force or threat of force)  
636:1 Robbery. –

I. A person commits the offense of robbery if, in the course of committing a theft, he:

(a) Uses physical force on the person of another and such person is aware of such force; or

(b) Threatens another with or purposely puts him in fear of immediate use of physical force.

II. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, in an effort to retain the stolen property immediately after its taking, or in immediate flight after the attempt or commission.

III. Robbery is a **class B felony**, except that if the defendant:

(a) Was actually armed with a deadly weapon; or

(b) Reasonably appeared to the victim to be armed with a deadly weapon; or

(c) Inflicted or attempted to inflict death or serious injury on the person of another, the offense is a **class A felony**, except that if the defendant was actually armed with a deadly weapon, and the deadly weapon was a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

### **Manslaughter**

630:2 Manslaughter. –

I. A person is guilty of manslaughter when he causes the death of another:

(a) Under the influence of extreme mental or emotional disturbance caused by extreme provocation but which would otherwise constitute murder; or

(b) Recklessly.

II. Manslaughter shall be punishable by imprisonment for a term of not more than 30 years.

III. In addition to any other penalty imposed, if the death of another person resulted from the driving of a motor vehicle, the court may revoke the license or driving privilege of the convicted person indefinitely.

### **Murder**

A person convicted of a murder in the first degree shall be sentenced to life imprisonment and shall not be eligible for parole at any time.

### **Assault**

631:1 First Degree Assault. –

I. A person is guilty of a class A felony if he:

- (a) **Purposely** causes serious bodily injury to another; or
- (b) Purposely or knowingly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or
- (c) Purposely or knowingly causes injury to another resulting in miscarriage or stillbirth; or
- (d) Knowingly or recklessly causes serious bodily injury to a person under 13 years of age.

631:2 Second Degree Assault. –

I. A person is guilty of a class B felony if he:

- (a) **Knowingly or recklessly** causes serious bodily injury to another; or
- (b) Recklessly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or
- (c) Recklessly causes bodily injury to another under circumstances manifesting extreme indifference to the value of human life; or
- (d) Purposely or knowingly causes bodily injury to a child under 13 years of age; or
- (e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth.

631:2-a Simple Assault. –

- I. A person is guilty of simple assault if he:
- (a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or
  - (b) Recklessly causes bodily injury to another; or
  - (c) Negligently causes bodily injury to another by means of a deadly weapon.

II. Simple assault is a misdemeanor unless committed in a fight entered into by mutual consent, in which case it is a violation.

### **Harm caused by a caregiver**

- II. Any caregiver who purposely causes serious bodily injury to an elderly, disabled, or impaired adult by neglect shall be guilty of a class A felony.
- III. Any caregiver who knowingly or recklessly causes serious bodily injury to an elderly, disabled, or impaired adult by neglect shall be guilty of a class B felony.

### **THEFT**

Conduct denominated theft in this chapter constitutes a single offense embracing the separate offenses such as those heretofore known as larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail, receiving stolen property. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or information.

637:11 Penalties. –

- I. Theft constitutes a class A felony if:
- (a) The value of the property or services exceeds \$1,000, or
  - (b) The property stolen is a firearm, or
  - (c) The actor is armed with a deadly weapon at the time of the theft, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.
- II. Theft constitutes a class B felony if:
- (a) The value of the property or services is more than \$500 but not more than \$1000, or
  - (b) The actor has been twice before convicted of theft of property or services, as a felony or class A misdemeanor, or
  - (c) The theft constitutes a violation of RSA 637:5, II(a) or (b), or
  - (d) The property or services stolen are from 3 separate business establishments within a 72-hour period.
- III. Theft constitutes a misdemeanor if the value of the property or services does not exceed \$500.

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Sunday, October 5, 2008 article (AP) --  
Summary –

New Hampshire is involved in multiple efforts to evaluate the benefits of alternative sentencing programs for nonviolent offenders. A commission that includes government officials, legal experts and county, prison and mental health care administrators met twice last month to discuss how the state could save money through programs that keep nonviolent offenders out of jail.

"We wanted to get together the people who know the most about these issues and take a judicial approach to how we can deal with inmates convicted of crimes when they are not violent and ask, 'Is sending them to a prison cell the best way we can be dealing with our criminal justice obligations?'" said state Sen. Maggie Hassan, D-Exeter, who sponsored the bill creating the commission....

Next month, a two-day conference will bring county and state leaders together to exchange ideas on creating statewide sentencing alternatives for nonviolent offenders with mental illness or drug dependency. The New Hampshire judicial branch recently was selected as one of four jurisdictions in the country for a national project designed to help states improve court responses to people with mental illness, and the president of the New Hampshire Bar Association said she is making the issue a top priority.

USA Today article By Kevin Johnson, USA TODAY July 1, 2009

A study funded by the Justice Department concludes that over time accused robbers, burglars and batterers pose no greater risk to employers than job candidates in the general population.

In a review of 88,000 arrestees in New York state, Carnegie Mellon University investigators found, for example, that after about 7 1/2 years the "hazard rate" for an 18-

year-old first-time arrestee for robbery declined to the same rate as an 18-year-old in the general population. For 18-year-olds arrested for aggravated assault, it took about four years to reduce the risk. Hazard rates are calculated based on the time the suspect remains free from re-arrest. The calculation also accounts for the fact that risk of arrest generally declines with age.

"We believe that our analysis provides the criminal justice community with the first scientific method for estimating how long is long enough for someone with a prior record" to no longer be considered a special risk, according to the study authored by Carnegie Mellon criminologist Alfred Blumstein. Blumstein and other criminal justice analysts say the ongoing research could ease employers' concerns about hiring former offenders and perhaps spark new legislative proposals to limit the liability for employers who do hire them....

The Society for Human Resource Management estimates that 80% of U.S. employers perform background checks. An estimated 74 million criminal records were contained in automated databases across the U.S., according to the Bureau of Justice Statistics. "Computerized criminal records can have long memories, and this (study) is intended to provide guidance for imposing some limits to that memory," Blumstein says.

The study focused on three offenses — robbery, burglary and aggravated assault — because they represented some of the largest sample numbers. Murder was not included in the report and will not be part of future reports, because, Blumstein says, "nobody fully redeems a murderer."

"People are finally starting to get it. They would rather see people working, than to shut people out," says Veronica Ballard, a vice president of the Safer Foundation, which helps ex-offenders find work.

Rep. Danny Davis, D-Ill., a sponsor of the Second Chance Act legislation designed to re-integrate offenders back into society, says any measure that might encourage potential employers to hire ex-offenders is a "powerful" tool.

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### **More on sentencing laws:**

From a Sunday, Oct. 4, 2009 article in the NH Sunday News about early release of two men who killed their wives years ago:

“...an inmate sentenced to state prison for six years or longer must serve at least four years, or two-thirds of his minimum sentence, whichever is greater, and may petition for early release no more often than every three years. People sentenced to less than six years cannot bring a petition until serving at least two-thirds of their minimum sentence, according to RS 651.20.

“The law allows two conditions under which inmates can file with the court at any time: When prior to filing the commissioner of the Dept of Corrections has found the prisoner is a suitable candidate; and When the Attorney General has filed the petition in recognition of the inmate’s substantial assistance in the investigation of a serious crime...”

“Wrenn said he simply is following a new law that required him to reconstitute the clemency board and make recommendations as to which inmates are ‘suitable candidates’ to petition the courts for sentence modification. The board had been disbanded around 2000, he said.

‘To us, it’s a way to offer an incentive to inmates—especially those serving lengthy sentences—to not sit on their butts and waste time, but to do things that will make changes in their lives,’ Wrenn said.”

“Rep. Stephen Shurtleff, D-Penacook, said he supports Wrenn. ‘If he feels these individuals can be released without any danger to the community, I would defer to his judgment,’ Shurtleff said.”

#### **Truth in Sentencing**

“Shurtleff has serious reservations about whether the state’s truth-in-sentencing serves its purpose, he said, especially when it costs \$32,000 a year to house an inmate in the state prison.

“Former House Speaker Donna Sytek, who was a major force in passing truth in sentencing in the early 1980s, said that before

then, inmates received 150 day of ‘good time’ off their sentences every year.

‘Every time you stray from truth in sentencing, you raise a question in the public’s mind as to whether the sentence imposed really means anything,’ Sytek said.”