

## SUMMARY OUTLINE OF CRIMINAL LEGISLATION PASSED IN 2008

Michael J. Iacopino  
Brennan Caron Lenehan & Iacopino  
85 Brook Street  
Manchester, N.H. 03104

[miacopino@bclilaw.com](mailto:miacopino@bclilaw.com)

## **INTRODUCTION**

The purpose of this outline is to summarize changes to the criminal law that occurred during the second year of the 2007-2008 legislative session in New Hampshire. As usual the Legislature was busy in the criminal arena. Sex crime legislation aimed at beefing up the state's child pornography and internet solicitation laws and implementing the federal Adam Walsh Act were prominent on the legislative task list resulting in the passage of SB 495 (Child Pornography and Internet Solicitation) and HB 1640 (Adam Walsh Act legislation). The legislature was also busy in the traffic crime area plugging holes that have been nettlesome to law enforcement officials over the past few years. Sentencing issues, gang legislation and bail commissioners rounded out the legislative agenda this past year. The purpose of this article is to address the highlights of the session and therefore will not address every change in the criminal statutes. Nonetheless a chart listing the new criminal amendments and identifying the effected statutes is attached to facilitate the reader's independent review.

### **I. SEX CRIMES**

The Legislature was most active in the sex crimes arena. SB 495 brought a comprehensive overhaul of New Hampshire's child pornography and internet solicitation statutes, R.S.A. 649-A and R.S.A. 649-B. The Legislature also passed a massive bill designed to implement the provisions of the federal Adam Walsh Act, HB 1640. Finally the Legislature created a new violation offense - public urination or defecation, R.S.A. 645:1-a.

## **A. Child Pornography and Internet Solicitation SB 495**

SB 495 brings three major changes. It raise the threshold age for child pornography from 16 to 18. It substantially increases the criminal penalties for child pornography and internet solicitation of children. Finally, the legislation sets new rules for the discovery of child pornography images by the defense.

**1. Threshold age.** Prior to this legislation there was an inconsistency between state and federal law as to what constitutes child pornography. New Hampshire previously defined the term “child” for purposes of the child pornography statute as “any person under the age of 16 years.” See, R.S.A. 649-A:2, I (Supp. 2007). Commencing on January 1, 2009, the term “child” refers to “any person under the age of 18 years.” Laws, 2008, c. 323:1. A new section of the statute leaves the determination of age solely to the trier - of - fact with the following language: “Whether a child depicted in a visual representation is a minor for the purposes of this chapter is a question of fact for the jury and may be found by expert or lay testimony, or by viewing the images.” Laws, 2008, c. 323:3; R.S.A. 649-A:6 (Supp. 2009).

**2. Increased penalties: child pornography and solicitation offenses.** New Hampshire’s child pornography and internet solicitation penalties were, until passage of SB 495, less severe than comparable federal penalties and penalties from other states. SB 495 puts New Hampshire squarely in line with federal penalties and those in other states with the exception that New Hampshire still does not require minimum mandatory sentences for these offenses.

Under the new scheme New Hampshire differentiates between possession of child pornography, distribution of child pornography and manufacture of child

pornography with an increasing schedule of sanctions. Under the prior law all child pornography offenses were Class B felonies unless the defendant had a prior conviction, in which case the offense was a Class A felony. See, R.S.A. 649:3 (Supp. 2008). Under the new law the following penalties apply:

- Possession of child sex abuse images: Class A felony if no prior convictions. Second offense: 10 - 20 years. See, R.S.A. 649-A:3, II; Laws, 2008, c. 323:1.
- Distribution (including “transfer”) of child sex abuse images: 10 - 20 years if no prior convictions. Second offense: 15 - 30 years. See, Laws, 2008, c. 323:1; R.S.A. 649-A:3-a (Supp. 2009).
- Manufacture of child sex abuse images: 15 - 30 years if no prior convictions. Second offense: Life. See, Laws, 2008, c. 323:1; R.S.A. 649-A:3-b (Supp. 2009).

The statute as amended retains the affirmative defense of justifiable dissemination for scientific, medical, educational, governmental and library purposes. See, R.S.A. 649-A:5. Additionally a new affirmative defense to child pornography is contained in SB 495. The new affirmative defense requires that the defendant possessed less than three images, and promptly took reasonable steps to destroy each image or provided the images to the police. See, Laws, 2008, c. 323:1; R.S.A. 649-A:3, III (Supp. 2009).

New Hampshire’s internet solicitation statute was similarly amended. The statute as it presently exists treats internet solicitation of a child as a Class B felony. See R.S.A. 649-B:4 (Supp. 2008). As amended by SB 495 the penalty scheme for internet child solicitation is:

- Victim 13 years of age or older: Class B felony.
- Victim under 13 years: Class A felony.

- Second offense victim 13 years of age or older: Class A felony
- Second offense, victim under 13 years: 10 - 20years.
- Two or more previous convictions: 30 years maximum.

Laws, 2008, c. 323:4; R.S.A. 649-B:4 (Supp. 2009). The new statute also contains the following salient feature: “It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.” Laws, 2008, c. 323:4; R.S.A. 649-B:4, III (Supp. 2009).

**3. Limitations on Defense Discovery of Images.** Following the federal lead the New Hampshire legislature has restricted discovery rights in child pornography cases. However, the new provisions of the statute do provide a discovery safety valve for those situations where the defense can establish a need for copies of the images in order to properly prepare a defense. The new statute begins with a presumption that the child pornography images will remain in the custody of the state, R.S.A. 649-A:7, I (Supp. 2009), and the state must “provide ample opportunity “for review by the defendant, his attorneys and experts at a “state facility.” Laws, 2008, c. 323:3; R.S.A. 649-A:7, II (Supp. 2009). The presumption can be overcome however, upon a defense showing that “ it is necessary to copy, photograph, duplicate, or otherwise reproduce such material or property in order to prepare a defense.” See, Laws, 2008, c. 323:3; R.S.A. 649-A:7, III (Supp. 2009). The statute provides:

Upon a defense motion or by agreement of the parties establishing that it is necessary to copy, photograph, duplicate, or otherwise reproduce such material or property in order to prepare a defense, the court may authorize such action, provided that the court's order include a protective order prohibiting disclosure of the material or property to any one other than the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, or any expert retained in

anticipation of criminal litigation or for preparation for trial. The court protective order shall require that all such material or property provided to the defense be kept secure against theft and inadvertent disclosure to any other person and be maintained in a manner which deters copying or dissemination. Any person either handling or viewing such material or property shall sign a non-disclosure agreement agreeing to refrain from copying or publishing any visual representation of a child engaging in or being engaged in sexually explicit conduct. Any person who views any of the images shall certify in writing that he or she has not knowingly kept any material or property which would qualify as an image of child sexual abuse under state or federal law, and that all materials, property, and signed non-disclosure agreements shall be returned to the state at the end of the case.

Laws, 2008, c. 323:3; R.S.A. 649-A:7, III (Supp. 2009). If federal jurisprudence serves as a harbinger of things to come in state court, defense counsel should review *United States v. Knellinger*, 471 F. Supp. 2d 640 (E.D. Va., 2007).

In *Knellinger*, the United States District Court for the Eastern District of Virginia found similar federal anti-discovery provisions to be facially constitutional because they did not unduly burden the defendant's right to a fair trial. But, the *Knellinger* court also held that the government failed to provide an ample opportunity for the defendant to examine the evidence and thus issued an order requiring that a mirror image of the hard drive be prepared and provided to the defense expert with a protective order. *Knellinger* and every reported district court case has required an individual assessment based upon the facts of the individual case. It is important to note that most of the cases that have found that an ample opportunity to examine the evidence was provided to the defendant are based upon a review of extensive federal facilities that were available to the defendant and his experts or the lack of a record that the government had not made the materials available. In New Hampshire extensive computer lab facilities are simply not available. There is only one crime laboratory in New Hampshire

and neither our prosecutor offices nor our courthouses are designed or equipped to provide the types of examination required. This statute is likely to lead to considerable discovery litigation over the next few years.

## **B. Adam Walsh Act Implementation HB 1640**

HB 1640 is another extensive omnibus bill that attempts to bring the New Hampshire sex offender registration scheme into compliance with the federal Adam Walsh Act and its Sex Offender Registration and Notification (SORNA) provisions and regulations. The bill also adds a number of offenses to the list of offenses that render a defendant to be a “sexual offender” or an “offender against children” under the statute. See, generally R.S.A. 651-B.

**1. Additional offenses comprising “sexual offenses” or “offenses against children”:** HB 1640 added a number of offenses to the definition of both “sexual offenses”, see R.S.A. 651-B:1, V (a) (Supp. 2009), and “offenses against a child,” see, R.S.A. 651-B:1, VII (a) - (b). The new law adds the following offenses to the list of offenses comprising “sexual offenses:”

- Capital murder during rape, R.S.A. 630:1, I (e)
- First Degree murder during felonious sexual assault, R.S.A. 630:1-a, I (b)(1)
- Sexual assault with AFSA factors, R.S.A. 632-A:4, I(a)
- Sexual assault in position of authority, R.S.A. 632-A:4, III
- Violation of privacy with a hidden device, R.S.A. 644:9, I(a)
- Violation of privacy (peeping tom), R.S.A. 644:9, III-a
- Indecent exposure 2d offense, R.S.A. 645:1, I(a)

- Distribution and manufacture of child pornography R.S.A. 649-A:3-a and 3-b

See, Laws, 2008, c. 334:1; R.S.A. 651-B:1, V(a)(Supp. 2009). “Sexual offenses” are committed against victims who are 18 years of age or older. See, *id.* Similarly the list of offenses that constitute an “offense against a child” was supplemented by the following offenses in the new law:

- capital murder during rape, R.S.A. 630:1, I(e);
- first degree murder during felonious sexual assault, R.S.A. 630:1-a, 1(b)(1);
- sexual assault, R.S.A. 632-A:4, I(a) or R.S.A. 632-A:4, III;
- violation of privacy, R.S.A. 644:9, I(a) or R.S.A. 644:9, III-a;
- a second or subsequent offense within a 5- year period for indecent exposure and lewdness, R.S.A. 645:1, 1(a);
- indecent exposure and lewdness, R.S.A. 645:1, I(b), R.S.A. 645:1, II, and R.S.A. 645:1, III;.
- sexual assault, R.S.A. 632-A:4, I(b) if the actor was 18 years of age or older at the time of the offense.

See, Laws, 2008, c. 334:1; R.S.A. 651-B:1, VII (a)-(b) (Supp. 2009). The statutory scheme requires that the above offenses be committed against a child victim in order to qualify as “offenses against children” for registration purposes. *Id.*

It should also be note that this legislation expanded the discretion of the judge in declaring that a person who would not otherwise qualify for registration must register because his crime was committed “as a result of sexual compulsion or for purposes of sexual gratification.” See, R.S.A. 651-B:1, V (d) (Supp. 2008). Under the old law the victim of the offense must be under 18 years of age. The new statute eliminates the



age limitation. See, Laws, 2008, c. 334:1; R.S.A. 651-B:1, V (d) (Supp. 2009).

**2. The Tiered System of Sex Offender Registration:** On January 1, 2009, New Hampshire will completely re-structure its sex offender registration system by using a tier based system. In compliance with the federal Adam Walsh Act, these tiers are based upon the crime of conviction rather than any true type of risk assessment. The tiers are identified numerically starting with Tier I which is the least serious and extending to Tier III for the most serious.

a. A **“Tier I Offender”** means a sexual offender or offender against children who is required to register pursuant to R.S.A. 651-B:1, V(d) or R.S.A. 651-B:1, VII(e), or is required to register as a result of any of the following offenses:

- R.S.A. 632-A:4, I(a) (Sexual Assault);
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- R.S.A. 632-A:4, I(b) (Sexual Assault);
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- R.S.A. 632-A:4, III (Sexual Assault);
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- R.S.A. 644:9, I(a) (Violation of Privacy);
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- R.S.A. 644:9, III-a (Violation of Privacy);
  
- A second or subsequent offense within a 5-year period for indecent exposure and lewdness, R.S.A. 645:1, I(a); or R.S.A. 645:1, I(b);
  
- A law of another state, territory, tribal territory, or the federal government reasonably equivalent to a listed New Hampshire offense;
  
- Any out-of-state offense for which the offender is required to register in the state where the conviction occurred and the division determines the offender is a tier I offender;
  
- Any offense where the court determined the offender is a tier I offender and required the offender to register;

See, Laws, 2008, c. 334:1 R.S.A. 651-B:1, VIII (Supp. 2009).

b. A **“Tier II Offender”** means a sexual offender or offender against children

who is required to register pursuant to R.S.A. 651-B:1, V(d) or R.S.A. 651-B:1, VII(e), or is required to register as a result of any of the following offenses:

- R.S.A. 169-B:41, II (Contribution to Delinquency with Sexual Conduct);
- R.S.A. 632-A:3, I (Sex Contact Under AFSA Circumstances and Causing Serious Personal Injury);
- R.S.A. 632-A:3, II (Statutory Rape, Age 13-16);
- R.S.A. 632-A:3, IV (Sexual Contact in a Position Authority);
- R.S.A. 633:2 (Criminal Restraint);
- R.S.A. 633:3 (False Imprisonment);
- R.S.A. 639:3, III (Endangering Welfare -Soliciting for Porn or Penetration);
- R.S.A. 645:1, II (Indecent Exposure with Child under 16);
- R.S.A. 645:1, III (2d Offense Indecent Exposure with Child under 16);
- R.S.A. 645:2 (Prostitution);
- R.S.A. 649-A:3 (Child Pornography);
- R.S.A. 649-B:3 (Child Computer Solicitation);
- R.S.A. 649-B:4 (Child Computer Solicitation);
- R.S.A. 650:2 (Obscenity);
- A law of another state, territory, tribal territory, or the federal government reasonably equivalent to a New Hampshire offense;
- Any out-of-state offense for which the offender is required to register in the state where the conviction occurred and the division determines the offender is a tier II offender;
- The offender is required to register as a result of more than one sexual offense or offense against a child.
- Any offense not previously listed where the court determined the offender

is a tier II offender and required the offender to register.

See, Laws, 2008, c. 334:1 R.S.A. 651-B:1, IX (Supp. 2009).

c. A **"Tier III Offender"** means a sexual offender or offender against children who is required to register pursuant to R.S.A. 651-B:1, V(d) or R.S.A. 651-B: I, VII(e), or is required to register as a result of any of the following:

- (a) R.S.A. 630:1, I(e) (Capital Murder During Rape);
- R.S.A. 630:1-a, I(b)(1) (First Degree Murder During Felonious Sexual Assault);
- R.S.A. 632-A:2 (Aggravated Felonious Sexual Assault);
- R.S.A. 632-A:3, III (Sexual Contact with Victim Under 13 Years of Age);
- R.S.A. 633:1 (Kidnaping);
- Any sexual offense or offense against a child if the offender was sentenced to an extended term of imprisonment pursuant to R.S.A. 651:6;
- Any person civilly committed as a sexually violent predator pursuant to R.S.A. 135-E;
- A law of another state, territory, tribal territory, or the federal government reasonably equivalent to a New Hampshire offense;
- Any out-of-state offense for which the offender is required to register in the state where the conviction occurred, and the division determines the offender is a tier III offender;
- The offender is required to register as a result of more than 2 sexual offenses or offenses against a child;
- Any offense not previously listed where the court determined the offender is a tier III offender and required the offender to register.

See, Laws, 2008, c. 334:1 R.S.A. 651-B:1, X (Supp. 2009).

**3. Duration of the Registration Requirement:** Under the new legislation the duration of the registration requirement is determined by the tier in which the Defendant

fits. A Tier I Offender must register for ten years. R.S.A. 651-B: 6, II (Supp. 2009). However, a Tier I offender may petition the court to be removed from the “public list” after five years. R.S.A. 651-B: III (a)(3) (Supp. 2009); See, Laws, 2008, c. 334:4. Tier II and Tier III require lifetime registration. R.S.A. 651-B:6, I (Supp. 2009). However, a Tier II offender may petition the court for removal from the public list after 15 years. R.S.A. 651-B:6, III (a)(2). A Tier III offender is never removed from the public list. R.S.A. 651-B: 6, I (Supp. 2009). See, Laws, 2008, c. 334:4.

**4. Frequency and Details of Registration:** Tier III Offenders are required to register on a quarterly basis, see, R.S.A. 651-B:4, I (a), while Tier I and II Offenders continue to register semi-annually, see, R.S.A. 651-B:4, I (b). Voluminous information is required to be registered under the new law. The new statute requires the defendant to provide the following information:

- (a) Name, aliases, electronic mail addresses, and any instant messaging, chat, or other Internet communication name identities.
- (b) Address of any permanent residence and address of any current temporary residence, within the state or out-of-state, and mailing address. A post office box shall not be provided in lieu of a physical residential address. If the offender cannot provide a definite address, he or she shall provide information about all places where he or she habitually lives.
- (c) Name, address, and date of any employment or schooling. For purposes of this section, the term “employment” includes volunteer work or work without remuneration. If the offender does not have a fixed place of work, he or she shall provide information about all places he or she generally works, and any regular routes of travel.
- (d) Any professional licenses or certifications that authorize the offender to engage in an occupation or carry out a trade or business.
- (e) Vehicle make, model, color, and license plate number and state of registration of any vehicle owned or regularly driven by the offender, and the place or places where such vehicles are regularly kept.

- (f) Date of birth, including any alias date of birth used by the offender.
- (g) Social security number.
- (h) Physical description to include identifying marks such as scars and tattoos.
- (l) Telephone numbers for both fixed location and cell phones.
- (j) Passport, travel, and immigration documents.
- (k) The name, address, and phone number of any landlord, if the offender resides in rental property.

See, R.S.A. 651:4, III (a) - (k); Laws, 2008, c. 334:4. In addition the defendant may be required to provide the following:

- (a) A photograph taken by the law enforcement agency each time the person is required to report to the law enforcement agency under this section.
- (b) A DNA sample, if such sample has not already been provided.
- (c) A set of major case prints, including fingerprints and palm prints of the offender.
- (d) A photocopy of a valid driver's license or identification card issued to the offender.

See, R.S.A. 651:4, IV (a) - (d) (Supp. 2009). The consent of the registrant shall not be necessary to obtain this information. Such information may be used in the performance of any valid law enforcement function. *Id.* See, Laws, c. 2008, 334:4.

**5. Violation of Registration Laws:** An offender who fails to comply with his registration requirements is guilty of a misdemeanor if he does so negligently and guilty of a Class B felony if he knowingly fails to comply. A second offense is a Class A felony. See, R.S.A. 651-B: 9, I - III. HB 1640 also adds a provision to the Motor Vehicle Code requiring that the license or right to drive of an offender who has failed to register

shall be suspended. See, R.S.A. 263:56-a, I; Laws, 2008, c. 334:12.

### **C. Public Urination or Defecation HB 1294**

HB 1294, Laws, 2008, c. 70:1, created a new violation level offense. The new statute forbids public urination or defecation under circumstances that are likely to cause affront or alarm. See, R.S.A. 645:1-a (Supp. 2009). At first blush the law appears to be another sign of an advancing “nanny state,” however, the law was passed to allow prosecution that will not lead to a registerable offense. Convictions, even, multiple convictions for this violation do not require registration.

## **II. TRAFFIC LAWS**

Most of the session’s traffic legislation was passed to fill perceived loop-holes in various statutes. The Legislature addressed subsequent DWI offenses, blood and urine testing for drugs and alcohol, BWI, and diversionary dispositions for CDL holders. The Legislature also passed laws pertaining to perennial problem areas: IDIP Programs and Mutual Aid between police departments.

### **A. Subsequent DWI and Repealed Laws**

In 2006 the Legislature undertook a comprehensive re-organization of the DWI laws. Although no substantive changes to the laws were intended, virtually all of the DWI laws were repealed and re-codified at R.S.A. 265-A. However, the re-codification did not include a reference back to the repealed laws and many keen criminal defense lawyers took the opportunity to craft arguments to avoid subsequent offense convictions. One of the Legislature’s first acts, this session, was to pass HB 1130 to specifically include convictions under the repealed statutes for predicate purposes. HB 1130 amends R.S.A. 265-A for the specific purpose of including convictions under the

previously repealed statutes as predicate offenses. See, Laws, 2008, c. 62.

**B. Expanded Denial of Privilege :  
Hospital Urine and Blood Testing for Drugs  
SB 433**

It's been a long time since the doctor-patient privilege codified at R.S.A. 329:26 has provided any relief for DWI defendants. Defendant's have routinely looked to our courts to protect their fourth amendment rights as the Legislature continuously chips away at bedrock constitutional protections in the name of safe highways. The last legislative session was no exception. Sniffing out the smallest remaining vestige of a fourth amendment right in our blood, urine and medical records the Legislature passed SB 433. The bill extends the waiver of the doctor-patient privilege to urine samples and blood samples designed to test for the presence of drugs for the purposes of diagnoses and treatment. This statute remains in gross violation of the reasonable expectation of privacy that we all maintain in such basic elements of life such as our bodily fluids and medical records.

**C. BWI  
SB 379**

SB 379 amends the Boating While Intoxicated section of the DWI statute pertaining to a refusal of consent. The statute as amended does the following:

1. Amends R.S.A. 265-A:1 by defining the term "operate" when used in relation to a boat to mean "to drive, paddle, row, or exercise control over any boat unless the boat is at anchor, docked, made fast or moored."

2. Amends R.S.A. 265-A:14, IV, in applying the refusal of consent provisions to boating cases to include the loss of both driving and boating privileges. Importantly the amended statute now requires that the arresting officer inform the defendant that a

refusal to submit to a test will result in the loss of motor vehicle and boating privileges.

R.S.A. 265:14, IV, (d). Laws, 2008, c. 316:2.

3. The new legislation also amended R.S.A. 265:45, to include transportation of alcohol via a boat by a minor. The penalty, after hearing is a 90 day loss of boating and driving privileges.

#### **D. IDIP Amendments HB 1311**

HB 1311 effects two aspects of DWI sentencing - the manner of sentence calculation and the impact of IDIP participation.

Interestingly HB 1311 eliminates the reference to “24 hour periods” and replaces such references with the word “days”. The standard interpretation of “days” as used in a sentence means “any part of a day” and if applied this way by the jails could result in several hours less incarceration for each jailed DWI defendant.

HB 1311 also amends the IDIP portions of the DWI statute pertaining to oversight and certification of the programs.

#### **E. CDL Convictions HB 1343**

HB 1343 creates a new statute, R.S.A. 262:42-a. This new statute limits court discretion by stating:

The court shall not place on file, mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent the conviction of a holder of a commercial driver license, or a person required to hold a commercial driver license, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, from appearing on the driver’s record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

This new statute raises the stakes considerably for holders of commercial drivers



licenses. The new statute becomes effective on January 1, 2009.

### **F. Expansion of Mutual Aid Authority SB 376**

Although not technically a traffic statute this Bill will expand the ability of police officers to exercise police authority in nearby towns even in the absence of a written mutual aid agreement as currently required. The bill amends R.S.A. 105:13 to allow a police officer to exercise police authority in a nearby town when there is no written mutual aid agreement and:

1. Assistance is requested by a law enforcement official of the town, or,
2. When it is necessary to respond to a crime in progress, a traffic accident, a disaster, disturbance in progress or other emergency if requested by a public safety dispatcher

In both cases the responding out of town officer's authority ends when relieved by a local officer or otherwise directed by a ranking officer. See, R.S.A. 105: 13.

### **III. BAIL ISSUES**

Bail Commissioners were a well represented constituency in the Legislature this past session. They managed to obtain broader powers and higher fees. SB 400 amends R.S.A. 597:15-a to allow bail commissioners to exercise their authority in their own court or any other district court. Laws, 2008, c. 105.1. HB 1414 amends R.S.A. 597:20 to increase bail commissioner fees from \$30.00 to \$40.00. Laws, 2008, c. 117:1. Finally the Legislature clarified the bail pending appeal statute with SB 487. SB 487 amends R.S.A. 597:1-a, II, to allow bail pending appeal when a "good faith representation" is made that the defendant shall file a timely appeal and satisfying the traditional standard for bail pending appeal. See, Laws, 2008, c. 200:1.

## IV. SENTENCING AND STREET GANGS

The Legislature took one step forward and one step backwards in the sentencing arena this past session. HB 589 cured the so-called Horner Problem by permitting a method for sentence suspension for inmates with sentences of less than 4 years. SB 570 created an extended term of imprisonment for members of criminal street gangs and also criminalized gang recruitment.

### A. Suspending Sentences and Calculating Sentences HB 589

HB 589 addressed the problem raised in *State v. Horner*, 153 N.H. 306 (2006). In *Horner* the defendant was prohibited from seeking a suspension of his state prison sentence upon completion of the sex offender program because each of his sentences was less than four years. The *Horner* Court held that under the original scheme of sentence suspension each sentence stood alone and could not be combined for the purposes of determining whether four years or two thirds of a sentence had been reached. After unprecedented telephone testimony for Mr. Horner, a state prisoner, before the House Committee on Crime and Public Safety the Legislature passed HB 589. This statute clarifies that any person serving a state prison sentence may move to suspend the sentence after serving 2/3's of the sentence. The bill also provides that you use the longest minimum term of concurrent sentences to determine the total minimum sentence and that you add together the minimum term of consecutive sentences in order to determine the minimum term for sentence suspension purposes. See, Laws, 2008, c. 114:1. The law becomes effective on January 1, 2009.

## **B. Street Gang Extended Term SB 570**

SB 570 creates an extended term of imprisonment for criminal street gang members who commit a crime of violence, a drug distribution crime, a Class A felony theft of firearm, the unlawful sale of a pistol or revolver, witness tampering and criminal street gang solicitation. See, R.S.A. 651:6, (l)(q) (Supp. 2009). The new statute contains a problematic and probably unconstitutional definition of street gang member that essentially relies upon guilt by association on the say-so of police officers or informants. The statute is effective on March 31, 2009, giving a gang study commission additional time to make further recommendations to the Legislature regarding street gang laws.

## **V. Miscellaneous**

Impersonating a police officer has been elevated from a misdemeanor to a Class B felony pursuant to SB 90. See, Laws, 2008, c. 225:1. The video recorder on a Taser gun used by policemen has been excepted from the provisions of the wiretapping and eavesdropping law under HB 1132. See, Laws, 2008, c. 139.

**AMENDMENTS TO CRIMINAL STATUTES  
 EFFECTIVE JANUARY 1, 2009  
 (Unless Otherwise Noted)**

**I. Sex Laws:**

Chapter (2008)	Bill No. (2008)	Title	RSA's Effected
70	HB 1294	Establishing the Offense of Public Urination or Defecation	RSA 645:1 (New)
323	SB 495	An Act Prohibiting Internet Solicitation and Exploitation of Children	RSA 649-A:2, 3 RSA 649-A:3-a, & 3-b (New) RSA 649-A:6, 7 (New) RSA 649-B:4 RSA 645:1 RSA 651-B:4-a (New) RSA 651-B:7 (II)(b)(1)(F) (New) RSA 189:13-a (V) RSA 651-B:1 (V)(b) RSA 651-B:6 (I) RSA 651-B:3 (IV) (New)
334	HB 1640	Classification of Convicted Sex Offenders and Offenders Against Children (Adam Walsh Act Implementation Legislation)	RSA 651-B:1 RSA 651-B:2 (II) & (III) RSA 651-B:3 RSA 651-B:4 RSA 651-B:5 RSA 651-B:6 RSA 651-B:7 RSA 651-B:9 (IV) RSA 651-B:10 RSA 651-B:11 RSA 644:9 (III-a) (New) RSA 632-A:1 (IV) RSA 632-A:1 (V) RSA 632-A:3 (II) RSA 639:2 (I) RSA 263:56-a(I)(e) (New) RSA 632-A:2(IV) (New) RSA 632-A:4(I)(c)

## II. DWI, BWI, Traffic

Chapter (2008)	Bill No.	Title	RSA's Effected
62	HB 1130	An Act relative to Repealed DWI Laws	RSA 259:39 (I)(q) RSA 259:39 (I)(r) (New) RSA 259:39 (I)(s) RSA 263:64(IV) RSA 265-A:1-a (New) RSA 651:5 (II)  <i>EFFECTIVE DATE: JULY 20, 2008</i>
149	HB 1343	Aan Act Prohibiting the Placing on File or Masking of Convictions Incurred by Holders of Commercial Driver Licenses or Persons Required to Hold Such Licenses.	RSA 262:42-a (New)
256	HB 1311	An Act Relative to Impaired Driver Intervention Programs	RSA 265-A:18 (I)(b)(3) RSA 265-A:18 (I)(c)(3) RSA 265-A:18 (IV)(a)(3) RSA 265-A:18 (VII)(d)-(e) RSA 265-A:39 (I) RSA 265-A:39 (IV)-(V) RSA 265-A:42 (V)  <i>EFFECTIVE DATE: AUGUST 25, 2008</i>
260	SB 236	Extending Authority for Police Mutual Aid	RSA 105:13 RSA 105:13 (II) (New) RSA 105:13 (III) (New) RSA 105:13 (IV) (New)  <i>EFFECTIVE DATE: AUGUST 25, 2008</i>

Chapter (2008)	Bill No.	Title	RSA's Effected
316	SB 379	An Act Relative to Boating While Intoxicated and Transporting Alcoholic Beverages by a Minor	RSA 265-A:1 (V) (New) RSA 265-A:14 ( IV) RSA 265-A:14 ( V ) (New) RSA 265-A:45 RSA 265-A:45 (II) (New) RSA 265-A:45 (III) (New) RSA 265-A:45 (IV) (New)  <i>EFFECTIVE DATE:                      JULY 2, 2008</i>
433	SB 433	Confidential Communications Between a Physician and a Patient	RSA 329:26  <i>EFFECTIVE DATE:                      SEPTEMBER 5, 2008</i>

### III. Bail

Chapter (2008)	Bill No.	Title	RSA's Effected
105	SB 400	Authority of Bail Commissioners	RSA 597:15-a  <i>EFFECTIVE DATE:                      MAY 28, 2008</i>
117	HB1414	An Act Increasing the Fee for Bail Commissioners	RSA 597:20  <i>EFFECTIVE DATE:                      AUGUST 2, 2008</i>
200	SB 487	An Act Clarifying the Law Regarding Bail Pending Appeal.	RSA 597:1-a (III)

### IV. Sentencing

Chapter (2008)	Bill No.	Title	RSA's Effected
114	HB 589	Calculation of Concurrent and Consecutive Terms of Imprisonment	RSA 651:20 (l)(a) RSA 651:20 (l)(a)(1) (New) RSA 651:20 (l)(a)(2) (New)
379	SB 507	Criminal Street Gangs (Extended Term of Imprisonment and Gang Recruitment)	RSA 651:6 (l) (o) RSA 651:6 (l) (p) (New) RSA 651:6 (l) (q) (New) RSA 651:6 (l-a) RSA 651:6 (l-b) (New) RSA 651:6 (l-c) (New) RSA 644:20 (New)  <i>EFFECTIVE DATE:                      MARCH 31, 2009</i>

### V. Miscellaneous

Chapter (2008)	Bill No.	Title	RSA's Effected
139	HB 1132	An Act Creating an Exception to the Wiretapping Statute for a Recording Device Used in Conjunction with a Taser or Other Similar Electroshock Device.	RSA 570-A:2 (II)(I) (New)  <i>EFFECTIVE DATE:                      AUGUST 5, 2008</i>
145	HB 1234	An Act Establishing an Affirmative Defense to Prosecution for a Possession Offense If a Person Has a Lawful Prescription for a Controlled Drug	RSA 318-B:2 (XIV) (New)
225	SB 90	AN ACT relative to the penalty for impersonating a law enforcement officer.	RSA 104: 28-a RSA 381:12

**CHAPTER 70**

**HB 1294 – FINAL VERSION**

13Feb2008... 0220h

2008 SESSION

08-2305

04/09

HOUSE BILL ***1294***

AN ACT establishing the offense of public urination or defecation.

SPONSORS: Rep. Shurtleff, Merr 10; Rep. Harvey, Hills 21

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill establishes public urination or defecation as a violation.

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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.

13Feb2008... 0220h

08-2305

04/09



STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT establishing the offense of public urination or defecation.

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

70:1 New Section; Public Indecency; Public Urination or Defecation. Amend RSA 645 by inserting after section 1 the following new section:

645:1-a Public Urination or Defecation. A person is guilty of a violation if such person urinates or defecates in a public place, other than a public restroom, under circumstances where the person knew or should have known would likely cause affront or alarm to another.

70:2 Effective Date. This act shall take effect January 1, 2009.

Approved: May 21, 2008

Effective Date: January 1, 2009

**CHAPTER 323**<http://www.jdsupra.com/post/documentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>**SB 495-FN – FINAL VERSION**

03/20/08 1066s

30Apr2008... 1456h

06/04/08 2099CofC

06/05/08 2184eba

2008 SESSION

08-2637

04/09

SENATE BILL ***495-FN***

AN ACT prohibiting Internet solicitation and exploitation of children.

SPONSORS: Sen. Foster, Dist 13; Sen. Letourneau, Dist 19; Sen. DeVries, Dist 18;  
Rep. Welch, Rock 8; Rep. W. Knowles, Straf 6

COMMITTEE: Judiciary

## AMENDED ANALYSIS

This bill:

- I. Increases the penalties for possession of images of a child engaging in sexually explicit conduct.
- II. Establishes penalties for manufacture and distribution of images of a child engaging in sexually explicit conduct.
- III. Redefines “visual representation” of sexually explicit images.
- IV. Increases the penalties for use of the Internet or other computer service to seduce, solicit, lure, or entice a child or a person believed to be a child to commit a sexual assault.
- V. Requires sexual offenders and offenders against children to report any online identifiers used.

VI. Permits the department of safety or a local law enforcement agency to verify the address of a sex offender through in-person contact at the offender's home or residence.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

03/20/08 1066s

30Apr2008... 1456h

06/04/08 2099CofC

06/05/08 2184eba

08-2637

04/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT prohibiting Internet solicitation and exploitation of children.

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

323:1 Child Pornography; Definitions. RSA 649-A:2 and RSA 649-A:3 are repealed and reenacted to read as follows:

649-A:2 Definitions. In this chapter:

I. "Child" means any person under the age of 18 years.

II. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit, or display.

III. "Sexually explicit conduct" means human masturbation, the touching of the actor's or other

person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.

IV. "Visual representation" means any visual depiction, including any photograph, film, video, digital image, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- (a) The production of such visual depiction involves the use of a child engaging in or being engaged in sexually explicit conduct; or
- (b) Such visual depiction is a digital image, computer image, or computer-generated image of a child engaging in or being engaged in sexually explicit conduct; or
- (c) Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in or being engaged in sexually explicit conduct.

V.(a) "Identifiable child" means a person:

- (1) Who was a child at the time the visual depiction was created, adapted, or modified; or
  - (2) Whose image as a child was used in creating, adapting, or modifying the visual depiction; and
  - (3) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.
- (b) The term "identifiable child" shall not be construed to require proof of the actual identity of the identifiable child.

VI. "Previous conviction" or "previously convicted" means having been convicted by a jury or a judge, or having plead guilty prior to the commission of the current offense. For purposes of this paragraph, a previous conviction need not have been affirmed on appeal.

VII. "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

#### 649-A:3 Possession of Child Sexual Abuse Images.

I. No person shall knowingly:

(a) Buy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct; or

(b) Bring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct.

II. An offense under this section shall be a class A felony if such person has had no previous convictions in this state or another jurisdiction for the conduct prohibited by paragraph I. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum sentence.

III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:

(a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:

(1) Took reasonable steps to destroy each such visual depiction; or

(2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

323:2 New Sections; Child Pornography; Distribution and Manufacture of Child Sexual Abuse Images. Amend RSA 649-A by inserting after section 3 the following new sections:

649-A:3-a Distribution of Child Sexual Abuse Images.

I. No person shall:

(a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell, exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually explicit conduct;

(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.

II.(a) If such person has had no previous convictions in this state or another state for the conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, the

defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the minimum.

(b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under subparagraph I(b) with having less than 3 images or visual representations, the defendant will be guilty of a class B felony.

III. Nothing in this chapter shall be construed to limit any law enforcement agency from possessing or displaying or otherwise make available any images as may be necessary to the performance of a valid law enforcement function.

#### 649-A:3-b Manufacture of Child Sexual Abuse Images.

I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.

II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, a person may be sentenced to life imprisonment or for such term as the court may order.

323:3 New Sections; Child Pornography; Proving Age of Child; Discovery. Amend RSA 649-A by inserting after section 5 the following new sections:

649-A:6 Proving Age of Child. Whether a child depicted in a visual representation is a minor for the purposes of this chapter is a question of fact for the jury and may be found by expert or lay testimony, or by viewing the images.

#### 649-A:7 Discovery.

I. In any criminal proceeding, any material that constitutes a visual representation of a child engaging in or being engaged in sexually explicit conduct shall remain in the care, custody, and control of the state or the court.

II. The state shall provide ample opportunity for the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, or any expert retained in anticipation of criminal litigation or for preparation for trial, to inspect, view, and examine the property or material at a state facility.

III. Upon a defense motion or by agreement of the parties establishing that it is necessary to copy, photograph, duplicate, or otherwise reproduce such material or property in order to prepare a defense, the court may authorize such action, provided that the court's order include a protective

order prohibiting disclosure of the material or property to any one other than the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony or any expert retained in anticipation of criminal litigation or for preparation for trial. The court protective order shall require that all such material or property provided to the defense be kept secure against theft and inadvertent disclosure to any other person and be maintained in a manner which deters copying or dissemination. Any person either handling or viewing such material or property shall sign a non-disclosure agreement agreeing to refrain from copying or publishing any visual representation of a child engaging in or being engaged in sexually explicit conduct. Any person who views any of the images shall certify in writing that he or she has not knowingly kept any material or property which would qualify as an image of child sexual abuse under state or federal law, and that all materials, property, and signed non-disclosure agreements shall be returned to the state at the end of the case.

323:4 Computer Pornography and Child Exploitation Prevention; Certain Uses of Computer Services Prohibited. RSA 649-B:4 is repealed and reenacted to read as follows:

649-B:4 Certain Uses of Computer Services Prohibited.

I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:

- (a) Any offense under RSA 632-A, relative to sexual assault and related offenses.
- (b) Indecent exposure and lewdness under RSA 645:1.
- (c) Endangering a child as defined in RSA 639:3, III.

II.(a) A person who violates the provisions of paragraph I shall be guilty of a class A felony if such person believed the child was under the age of 13, otherwise such person shall be guilty of a class B felony.

(b) A person convicted under paragraph I based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction shall be charged as a class A felony. If the indictment also alleges that the person believed that the child was under the age of 13, the person may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 10 years.

(c) If the person has been previously convicted 2 or more times for an offense under this section or a reasonably equivalent statute in another state, the person may be sentenced to a maximum term not to exceed 30 years.

III. It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.



323:5 Indecent Exposure and Lewdness. RSA 645:1 is repealed and reenacted to read as follows:  
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<http://www.jdsupra.com/post/documentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

645:1 Indecent Exposure and Lewdness.

I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.

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

(a) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.

(b) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.

(c) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.

III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.

323:6 New Section; Registration of Criminal Offenders; Online Identifiers. Amend RSA 651-B by inserting after section 4 the following new section:

651-B:4-a Registration of Online Identifiers. In addition to any other information a person who is required to register is required to provide pursuant to RSA 651-B:4, such person shall report any online identifier such person uses or intends to use. For purposes of this section, "online identifier" includes all of the following: electronic mail address, instant message screen name, user identification, user profile information, and chat or other Internet communication name or identity information. Such person shall report any changes to an existing online identifier, or the creation of any new online identifier to law enforcement before using the online identifier.

323:7 New Subparagraph; Registration of Criminal Offenders; Availability of Information to the Public. Amend RSA 651-B:7, II by inserting after subparagraph (b)(1)(E) the following new subparagraph:

(F) Any online identifiers, as defined in RSA 651-B:4-a, used by the individual.

323:8 School Employee and Volunteer Background Investigations. Amend RSA 189:13-a, V to read as follows:



V. Any person who has been convicted of any violation or attempted violation of RSA 630:1; ~~630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; 639:2; 639:3; 645:1, [(b)-] III-] or III; 645:2; 649-A:3-a; 649-A:3-b; 649-B:3; or 649-B:4; or any violation or any attempted violation of RSA 650:2~~ where the act involves a child in material deemed obscene; in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, or charter school. By decision of the appropriate governing body, a school administrative unit, school district, or charter school may deny a selected applicant a final offer of employment if such person has been convicted of any felony in addition to those listed above. The governing body may adopt a policy stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

323:9 Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1, V(b) to read as follows:

(b) RSA 169-B:41, II, 639:3, III, 649-A:3, **649-A:3-a, 649-A:3-b**, 649-B:3, 649-B:4, or 650:2, II; or

323:10 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6, I to read as follows:

I. Any sexual offender required to register as a result of a violation or attempted violation of RSA 632-A:2, 632-A:3, or 645:1, III, and any offender against children required to register as a result of a violation or attempted violation of RSA 169-B:41, II, 632-A:2, 633:1, 633:2, 639:2, 639:3, III, 645:2, II, 649-A:3, I, **649-A:3-a, 649-A:3-b**, 649-B:3, 649-B:4, or 650:2, II, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for life.

323:11 New Paragraph; Registration of Criminal Offenders; Release of Certain Sexual Offenders Into the Community. Amend RSA 651-B:3 by inserting after paragraph III the following new paragraph:

IV. In the discretion of the local law enforcement agency or the department, such agency or the department may affirmatively verify the address of any offender within that agency's jurisdiction through in-person contact at the home or residence of the offender.

323:12 Contingent Name Change. If SB 418 of the 2008 legislative session becomes law, the reference to "charter school" in RSA 189:13-a, V shall be changed to "chartered public school."

323:13 Effective Date.

I. Sections 6 and 11 of this act shall take effect January 1, 2009, at 12:01 a.m.

II. The remainder of this act shall take effect January 1, 2009.

Approved: July 2, 2008

Effective Date: I. Sections 6 and 11 shall take effect January 1, 2009, at 12:01 a.m.

II. Remainder shall take effect January 1, 2009.

## CHAPTER 334

### HB 1640-FN – FINAL VERSION

05Mar2008... 0742h

05/08/08 1644s

05/08/08 1770s

05/08/08 1794s

05/08/08 1778s

04Jun2008... 2151cofc

04Jun2008... 2186eba

#### 2008 SESSION

08-2819

04/10

#### HOUSE BILL ***1640-FN***

AN ACT relative to the classification of convicted sex offenders and offenders against children.

SPONSORS: Rep. Dokmo, Hills 6; Rep. Charron, Rock 7; Rep. Shurtleff, Merr 10; Rep. L. Hammond, Graf 11; Sen. Roberge, Dist 9

COMMITTEE: Criminal Justice and Public Safety

#### AMENDED ANALYSIS

This bill:

I. Creates a tier system for classification of sexual offenders and offenders against children

and revises the type of information which must be collected, the duration of registration, the verification of sex offender registry information, public access to such information, and penalties for failure to register.

II. Revises the definitions of “sexual contact” and “sexual penetration” for the purposes of sexual assault crimes.

III. Amends the elements of the crime of incest.

IV. Is a request of the study committee formed pursuant to 2006, 327:26 (HB 1692-FN).

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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.

05Mar2008... 0742h

05/08/08 1644s

05/08/08 1770s

05/08/08 1794s

05/08/08 1778s

04Jun2008... 2151cofc

04Jun2008... 2186eba

08-2819

04/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to the classification of convicted sex offenders and offenders against children.

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

334:1 Registration of Criminal Offenders. RSA 651-B:1 is repealed and reenacted to read as follows:

651-B:1 Definitions. In this chapter:

- I. "Department" means the department of safety.
- II. "Division" means the division of state police, department of safety.
- III. "Local law enforcement agency" means the chief of police in the city or town where the person resides or is temporarily domiciled, or, if the municipality has no police chief or if the person resides in an unincorporated place, the division.
- IV. "Sexual offender" means a person who is required to register for any sexual offense.
- V. "Sexual offense" means the following offenses where the victim was 18 years of age or older at the time of the offense:
  - (a) Capital murder, RSA 630:1, I(e); first degree murder, RSA 630:1-a, I(b)(1); aggravated felonious sexual assault, RSA 632-A:2; felonious sexual assault, 632-A:3; sexual assault, 632-A:4, I(a) or RSA 632-A:4, III; violation of privacy, RSA 644:9, I(a) or RSA 644:9, III-a; second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, I(a).
  - (b) A law of another state, country, territory, tribal territory, or the federal government reasonably equivalent to a violation listed in subparagraph (a). For purposes of this section, the term "country" refers to Canada, Great Britain, Australia, and New Zealand, as well as any other country that the United States State Department has determined has an independent judiciary that generally enforces the right to a fair trial.
  - (c) Any offense for which the offender is required to register in the state where the conviction occurred.
  - (d) Any other criminal offense which is not specifically listed in subparagraph (a) if the court finds by clear and convincing evidence at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual

gratification and protection of the public would be furthered by requiring the person to register. In determining whether the offender should be required to register, the court may consider the offender's prior criminal history and any other relevant information. If the court determines that the offender should be required to register, the court shall determine whether the offender should be required to register pursuant to the requirements of a tier I, tier II, or tier III offender. In determining in which tier the offender should register, the court shall consider the nature of other offenses that are currently listed in each tier; the extent to which public safety would be furthered; whether the victim was a minor when the offense occurred; and any other relevant factors. The hearing at which such a determination is made shall comply with due process requirements, including a right to appeal the finding. The court shall provide the defendant an opportunity to be heard on the issue prior to the imposition of the registration requirement and shall state on the record the reasons for its findings and the reasons for requiring registration.

VI. "Offender against children" means a person who is required to register for an offense against a child.

VII. "Offense against a child" means the following offenses:

(a) Any of the following offenses, where the victim was under the age of 18 at the time of the offense: capital murder, RSA 630:1, I(e); first degree murder, RSA 630:1-a, 1(b)(1); aggravated felonious sexual assault, RSA 632-A:2; felonious sexual assault, RSA 632-A:3; sexual assault, RSA 632-A:4, I(a) or RSA 632-A:4, III; kidnapping, RSA 633:1; criminal restraint, RSA 633:2; false imprisonment, RSA 633:3; incest, RSA 639:2; violation of privacy, RSA 644:9, I(a) or RSA 644:9, III-a; a second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, 1(a); indecent exposure and lewdness, RSA 645:1, I(b), RSA 645:1, II, and RSA 645:1, III; or prostitution, RSA 645:2.

(b) Intentional contribution to the delinquency of a minor, RSA 169-B:41, II; sexual assault, RSA 632-A:4, I(b) if the actor was 18 years of age or older at the time of the offense, endangering the welfare of a child, RSA 639:3, III; child pornography, RSA 649-A:3; computer pornography, RSA 649-B:3; certain uses of computer services prohibited, RSA 649-B:4; or obscene matters, RSA 650:2, II.

(c) A law of another state, country, territory, tribal territory, or the federal government reasonably equivalent to a violation listed in subparagraph (a) or (b). For purposes of this section, the term "country" refers to Canada, Great Britain, Australia, and New Zealand, as well as any other country that the United States State Department has determined has an independent judiciary that generally enforces the right to a fair trial.

(d) Any offense involving a victim under the age of 18 for which the offender is required to

register in the state where the conviction occurred.

(e) Any other criminal offense which is not specifically listed in subparagraph (a) if the court finds by clear and convincing evidence at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification and protection of the public would be furthered by requiring the person to register. In determining whether the offender is required to register, the court may consider the offender's prior criminal history and any other relevant information. If the court determines that the offender is required to register, the court shall determine if the offender shall register as a tier I, tier II, or tier III offender. In determining the tier in which the offender is to be registered, the court shall consider the nature of other offenses that are currently listed in each tier, the extent to which public safety would be furthered, whether the victim was a minor when the offense occurred, and any other relevant factors. The hearing at which such a determination is made shall comply with due process requirements, including a right to appeal the findings. The defendant shall have the opportunity to be heard prior to the imposition of the registration requirement, and the court shall state on the record the reasons for its findings and the reasons for requiring registration.

VIII. "Tier I offender" means a sexual offender or offender against children who is required to register pursuant to RSA 651-B:1, V(d) or RSA 651-B:1, VII(e), or is required to register as a result of any of the following offenses:

(a) RSA 632-A:4, I(a); RSA 632-A:4, I(b); RSA 632-A:4, III; RSA 644:9, I(a); RSA 644:9, III-a; a second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, I(a); or RSA 645:1, I(b).

(b) A law of another state, territory, tribal territory, or the federal government reasonably equivalent to a violation listed in subparagraph (a).

(c) Any out-of-state offense for which the offender is required to register in the state where the conviction occurred and the division determines the offender is a tier I offender.

(d) Any offense not listed in subparagraph (a) where the court determined the offender is a tier I offender and required the offender to register.

IX. "Tier II offender" means a sexual offender or offender against children who is required to register pursuant to RSA 651-B:1, V(d) or RSA 651-B:1, VII(e), or is required to register as a result of any of the following offenses:

(a) RSA 169-B:41, II; RSA 632-A:3, I; RSA 632-A:3, II; RSA 632-A:3, IV; RSA 633:2; RSA 633:3; RSA 639:3, III; RSA 645:1, II; RSA 645:1, III; RSA 645:2; RSA 649-A:3; RSA

649-B:3; RSA 649-B:4; or RSA 650:2.

(b) A law of another state, territory, tribal territory, or the federal government reasonably equivalent to a violation listed in subparagraph (a).

(c) Any out-of-state offense for which the offender is required to register in the state where the conviction occurred and the division determines the offender is a tier II offender.

(d) The offender is required to register as a result of more than one sexual offense or offense against a child.

(e) Any offense not listed in subparagraph (a) where the court determined the offender is a tier II offender and required the offender to register.

X. “Tier III offender” means a sexual offender or offender against children who is required to register pursuant to RSA 651-B:1, V(d) or RSA 651-B:I, VII(e), or is required to register as a result of any of the following:

(a) RSA 630:1, I(e), RSA 630:1-a, I(b)(1), RSA 632-A:2, RSA 632-A:3, III, or RSA 633:1.

(b) Any sexual offense or offense against a child if the offender was sentenced to an extended term of imprisonment pursuant to RSA 651:6.

(c) Any person civilly committed as a sexually violent predator pursuant to RSA 135-E.

(d) A law of another state, territory, tribal territory, or the federal government reasonably equivalent to a violation listed in subparagraph (a).

(e) Any out-of-state offense for which the offender is required to register in the state where the conviction occurred, and the division determines the offender is a tier III offender.

(f) The offender is required to register as a result of more than 2 sexual offenses or offenses against a child.

(g) Any offense not listed in subparagraph (a) where the court determined the offender is a tier III offender and required the offender to register.

XI.(a) “Required to register” means that a sexual offender or offender against children was charged with an offense or an attempt, conspiracy, solicitation, or as an accomplice to commit a sexual offense or offense against a child that resulted in one of the following outcomes:



(1) Conviction.

(2) A finding of not guilty by reason of insanity.

(3) An adjudication as a juvenile delinquent and the court at the time of the dispositional hearing finds, pursuant to RSA 169-B:19, that the juvenile is required to register.

(4) An adjudication of juvenile delinquency or its equivalent in another state or territory of the United States if the juvenile is required to register under the laws of that jurisdiction.

(5) An order committing the person as a sexually violent predator pursuant to RSA 135-E.

(b) A juvenile certified to stand trial as an adult, who is convicted, found not guilty by reason of insanity, or committed as a sexually violent predator, shall be treated as an adult for all purposes under this chapter.

XII. "SOR system" means the division of state police sex offender registry system.

XIII. Notwithstanding RSA 21:6-a, "residence" means a place where a person is living or temporarily staying for more than a total of 5 days during a one-month period, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

334:2 Registration of Criminal Offenders; Registration. Amend RSA 651-B:2, II-III to read as follows:

II. Upon receipt of information pursuant to RSA 106-B:14 concerning the disposition of any charges against any sex offender or offender against children, the division shall register such person and shall include the relevant information in the [~~law enforcement name search (LENS)~~] **SOR** system.

III. Upon receipt from any out-of-state law enforcement agency of information that a sex offender or offender against children has moved to New Hampshire, the division shall register such person and shall include the relevant information in the [~~LENS~~] **SOR** system.

334:3 Registration of Criminal Offenders; Release of Certain Sexual Offenders into the Community. Amend RSA 651-B:3 to read as follows:

651-B:3 Release of Certain Sexual Offenders Into the Community; Duties.



**I. (a) When a person is convicted of a sexual offense or offense against a child results in the person being required to register, the court shall notify the offender in writing and advise the offender of his or her duty to report under this chapter. The offender shall acknowledge in writing that he or she has received such notice. The court shall forward a copy of the notice to the division along with a copy of each offense for which he or she was convicted, including a copy of any indictment, complaint, juvenile petition, mittimus, or other court orders. The division shall enter such information into the *SOR* system.**

**(b) Upon release of any sexual offender or offender against children required to register, whether on probation, parole, conditional or unconditional release, completion of sentence, release from secure psychiatric care, release into the community after involuntary commitment, release from a juvenile detention facility, or for any other reason, the official in charge of such release shall notify the offender of the offender's duty to report under this chapter. The offender shall acknowledge in writing that he has received such notice. The official shall obtain the address at which the offender expects to reside upon release and shall report such address to the department. The department shall inform the local law enforcement agency in the city or town where the offender expects to reside. The local law enforcement agency in the city or town where the offender expects to reside may notify the superintendent of the school administrative unit and the principal of any school within its jurisdiction of the address at which the offender expects to reside. If such notification occurs, the local law enforcement agency shall also notify the superintendent of the school administrative unit and the principal of any school within its jurisdiction of any changes to the offender's information made pursuant to RSA 651-B:5. The division shall enter the information concerning the offender's release and notification in the [LENS] *SOR* system.**

**II. Upon receipt from any out-of-state law enforcement agency of information that a sex offender or offender against children has moved to New Hampshire, the department shall obtain the address at which the offender expects to reside and shall inform the local law enforcement agency. The local law enforcement agency in the city or town where the offender expects to reside may notify the superintendent of the school administrative unit and the principal of any school within its jurisdiction of the address at which the offender expects to reside. The department shall locate and shall serve notice upon such offender of the offender's duty to report under this chapter. Service by the department is not required if the offender has already registered with the local law enforcement agency in which the offender resides or is located as required by this chapter. At the time of the initial registration, the offender shall acknowledge in writing that the offender has received notice of the duty to report. The division shall enter the information concerning the offender's location in New Hampshire and notification in the [LENS] *SOR* system. This paragraph shall not apply to a sexual offender or offender against children who has moved to New Hampshire and has registered with a local law enforcement agency.**

III. Semi-annually, the department shall verify, ***in person***, the address at which the offender resides ***or*** by sending a letter by ~~certified non-forwarding mail to the offender~~. The address verification shall ~~[be sent to the offender]~~ ***occur*** prior to the offender's birthday and again prior to the offender's 6-month semi-annual registration. The address verification shall remind the offender of the obligation to register in person ~~[on a semi-annual basis]~~. The offender shall sign the ***address verification*** [letter] and return it to ***the officer, if the address verification was made in person, or to*** the department within 10 business days of receipt. ~~[If the offender's mailing address is to a post-office box, the department shall deliver by other means as determined by the department a letter to the offender's residence. The offender shall sign and return the letter within 10 business days of receipt.]~~

334:4 Registration of Criminal Offenders. RSA 651-B:4 through RSA 651-B:7 are repealed and reenacted to read as follows:

651-B:4 Duty to Report.

I. Any sexual offender or offender against children residing in this state shall report in person to the local law enforcement agency. The offender shall report in person as set forth in this section within 5 business days after the person's release, or within 5 business days after the person's date of establishment of residence, employment, or schooling in New Hampshire. If an offender has more than one residence, the offender shall report in person to the local law enforcement agency having jurisdiction over his or her primary residence and report the addresses of all his or her residences, including those outside of New Hampshire. The division shall notify the local law enforcement agencies having jurisdiction over the offender's other residences of the offender's address in their jurisdiction. Thereafter, the offender shall report as follows:

(a) Every tier III offender shall report in person quarterly, within 5 business days after each anniversary of the offender's date of birth and every 3 months thereafter.

(b) Every tier I and tier II offender shall report in person semi-annually, within 5 business days after each anniversary of the offender's date of birth and every 6 months thereafter.

II. Any nonresident offender shall report in person to the local law enforcement agency having jurisdiction over the place of employment or school. In the event a nonresident offender required to register under this paragraph does not have a principal place of employment in this state, the offender shall register in person with the department in Concord.

III. Each time a sexual offender or offender against children is required to report, the offender shall provide the following information:

- (a) Name, aliases, electronic mail addresses, and any instant messaging, chat, or Internet communication name identities.
- (b) Address of any permanent residence and address of any current temporary residence, within the state or out-of-state, and mailing address. A post office box shall not be provided in lieu of a physical residential address. If the offender cannot provide a definite address, he or she shall provide information about all places where he or she habitually lives.
- (c) Name, address, and date of any employment or schooling. For purposes of this section, the term “employment” includes volunteer work or work without remuneration. If the offender does not have a fixed place of work, he or she shall provide information about all places he or she generally works, and any regular routes of travel.
- (d) Any professional licenses or certifications that authorize the offender to engage in an occupation or carry out a trade or business.
- (e) Vehicle make, model, color, and license plate number and state of registration of any vehicle owned or regularly driven by the offender, and the place or places where such vehicles are regularly kept.
- (f) Date of birth, including any alias date of birth used by the offender.
- (g) Social security number.
- (h) Physical description to include identifying marks such as scars and tattoos.
- (i) Telephone numbers for both fixed location and cell phones.
- (j) Passport, travel, and immigration documents.
- (k) The name, address, and phone number of any landlord, if the offender resides in rental property.

IV. In addition to the information required pursuant to paragraph III, the department, at the time of the offender’s registration, may require the offender to submit the following:

- (a) A photograph taken by the law enforcement agency each time the person is required to report to the law enforcement agency under this section.
- (b) A DNA sample, if such sample has not already been provided.

(c) A set of major case prints, including fingerprints and palm prints of the offender.

(d) A photocopy of a valid driver's license or identification card issued to the offender. The consent of the registrant shall not be necessary to obtain this information. Such information may be used in the performance of any valid law enforcement function.

V. At periodic intervals, not less frequently than once each month, the commissioner of the department of corrections, the superintendent of each county department of corrections, and the commissioner of the department of health and human services shall forward to the division a statement identifying every sexual offender and offender against children who is confined in a facility under its control and who is eligible for any unsupervised work detail, release into the community following secure psychiatric care, or other assignment which may bring the offender into contact with members of the public. These statements shall include the information required in paragraph III and may include the information set forth in paragraph IV. In no event shall the statements include the identity of any victim.

VI. In addition to the requirements imposed under this section, the following provisions shall apply to any sexual offender or offender against children who is sentenced to an extended term of imprisonment pursuant to RSA 651:6, I(b):

(a) Every 90 days after the date of the offender's initial release or commencement of parole, the department shall mail a nonforwardable verification form to the offender's last reported address.

(b) The offender shall mail the verification form to the department within 10 days after receipt of the form.

(c) The verification form shall be signed by the offender, and state that the offender still resides at the address last reported to the local law enforcement agency.

### 651-B:5 Change of Registration Information; Duty to Inform.

I. When there is a change to any of the information that a sexual offender or offender against children is required to report pursuant to this chapter, the offender shall give written notification of the new information to the local law enforcement agency to which he or she last reported under RSA 651-B:4 within 5 business days of such change of information. In addition, any time a sex offender or offender against children changes residence, employment, or schooling, the offender shall report in person to the local law enforcement agency having jurisdiction over the offender's previous place of residence, place of employment, or school within 5 business days. The local law enforcement agency

receiving notice of the change of registration information shall forward a copy to the division within 5 days after receipt. The division shall notify the local law enforcement agency at the new place of residence, place of employment, or school, or the appropriate out-of-state law enforcement agency if the new place of residence, place of employment, or school is outside New Hampshire. The division shall include any new information in the SOR system.

II. Upon receipt of notice that an offender has changed residence, employment, or schooling to a place outside New Hampshire, the division shall notify the appropriate out-of-state law enforcement agency of that information. Within 10 business days after reporting the change of residence, employment, or schooling to the New Hampshire law enforcement agency, the offender shall report to the appropriate out-of-state law enforcement agency having jurisdiction over the new place of residence, place of employment, or school. If the offender fails to report to the appropriate out-of-state law enforcement agency the division shall maintain the offender's information in the SOR system.

III. The local law enforcement agency in the city or town where the offender resides may notify the superintendent of the school administrative unit and the principal of any school within its jurisdiction of a new place of residence, a change of name, or a change of an alias, of a person required to be registered under this chapter.

#### 651-B:6 Duration of Registration.

I. All tier II or tier III offenders shall be registered for life.

II. All tier I offenders shall be registered for a 10-year period from the date of release, provided that any such registration period shall not run concurrently with any registration period resulting from a subsequent violation or attempted violation of an offense for which the person is required to register.

III.(a)(1) All tier III offenders shall remain on the public list contained in RSA 651-B:7 for life.

(2) A tier II offender may petition the superior court to have his or her name and information removed from the public list. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 15 years after the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense. The court may grant the petition if the offender has not been convicted of any felony, class A misdemeanor, sex offense, or offense against a child, has successfully completed any periods of supervised release, probation, or parole, and has successfully completed an



appropriate sex offender treatment program as determined by the court. If the court denies the petition, the offender shall not file another petition for 5 years from the date of denial.

(3) A tier I offender may petition the superior court to have his or her name and other information removed from the public list. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 5 years after the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense. The court may grant the petition if the offender has not been convicted of any felony, class A misdemeanor, sexual offense, or offense against a child, has successfully completed any periods of supervised release, probation, or parole, and has successfully completed an appropriate sex offender treatment program as determined by the court.

(b) Prior to granting any petition to remove an offender from the public list, the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family, and permit those parties to be heard on the petition. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally, or by counsel, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the registration requirements will assist the individual in the individual's rehabilitation and will be consistent with the public welfare.

IV. Registration of any juvenile required to register pursuant to RSA 651-B:1, XI (a)(3) or (4) shall end when the juvenile turns 17 years of age unless the court which adjudicated the juvenile as a delinquent retains jurisdiction over the juvenile pursuant to RSA 169-B:4, V, in which case registration of the juvenile shall end when the court terminates jurisdiction over the juvenile's case. When the registration of a juvenile terminates, the department shall remove information relating to the juvenile from the SOR system and records of the juvenile's registration shall be handled in accordance with RSA 169-B:35 and RSA 169-B:36.

#### 651-B:7 Availability of Information to the Public and Law Enforcement.

I. Except as provided in this section, the records established and information collected pursuant to the provisions of this chapter shall not be considered "public records" subject to inspection under RSA 91-A:4. However, nothing in this chapter shall be construed to limit any law enforcement agency from making any use or disclosure of any such

information as may be necessary for the performance of a valid law enforcement function. Nothing in this chapter shall be construed to limit an individual's ability to obtain access to the individual's own records, or to limit access to a person's criminal record under the provisions of RSA 106-B:14, including address information obtained under the provisions of this chapter.

II. The division shall maintain a list of all tier I, tier II, and tier III offenders required to register pursuant to this chapter. The list shall also include all offenders about whom the division receives notice pursuant to RSA 651-B:4, V. In addition to the information contained on the public list pursuant to paragraph III, the law enforcement list shall include all information reported to the local law enforcement agency or the department pursuant to RSA 651-B:4. In addition, the information shall include the text of the statute under which the offender was convicted and the criminal history of the offender. The list maintained pursuant to this paragraph shall not be available to the public but shall be available to law enforcement officials for valid law enforcement purposes.

III.(a) The division shall maintain a separate public list of all tier I, tier II, and tier III offenders who are required to register as a result of an offense against a child, any offenders about whom the division receives notice pursuant to RSA 651-B:4, V that will be required to register as a result of an offense against children, and any offender who is required to register for more than one sexual offense or offense against a child. The public list shall include all of the following information:

- (1) Offender's name, alias, age, race, sex, date of birth, height, weight, hair and eye color, and any other relevant physical description.
- (2) Address of any permanent residence and address of any temporary residence, within the state or out-of-state.
- (3) The offense for which the individual is required to register and the text of the provision of law defining the offense, and any other sex offense for which the individual has been convicted.
- (4) The date and court of the adjudication on the offense for which the individual is registered.
- (5) Outstanding arrest warrants, and the information listed in subparagraphs (a)(1)-(3), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.
- (6) Criminal history of the offender, including the date of all convictions and the status of parole, probation, or supervised release, and registration status.

(7) A photograph of the individual.

(8) The address of any place where the individual is or will be a student.

(b) Where such information is available, the public list may also include:

(1) Information on the profile of the victim of the individual's offense.

(2) The method of approach utilized by the individual.

(c) The public list shall not include:

(1) The identity of any victim either directly or indirectly. Sexual offenders convicted under RSA 632-A:2 shall be listed on the public list in a manner which does not disclose, directly or indirectly, that the victim and the defendant were related or members of the same household. For sexual offenders convicted under RSA 632-A:2, I, no specific reference to any statutory subparagraph shall appear on the public list.

(2) The social security number of the offender.

(3) Arrests of the offender which did not result in a conviction.

(4) The name of the employer or school which the offender attends.

(5) Information about a juvenile delinquent required to register pursuant to RSA 651-B:1, XI (a)(3) or (4).

IV.(a) The public list shall be made available to interested members of the public upon request to a local law enforcement agency. The department of safety shall also make the list available to the public through the use of the department's official public Internet website. The Internet website shall be available to the public in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The website may include additional search parameters as determined by the department.

(b) Local law enforcement agencies may photograph, at the time of the registration, any individual who is required to be registered pursuant to this chapter. The consent of the registrant shall not be necessary. Such photographs may be used in the performance of any valid law enforcement function.

(c) In the discretion of the local law enforcement agency, such agency may affirmatively



notify the public that an offender who is included on the public list received by the  pursuant to subparagraph IV(a) is residing in the community. Document hosted at JD SUPRA  
<http://www.gencourt.state.nh.us/legislation/Viewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

V. Local law enforcement agencies, employees of local law enforcement agencies, county and state officials, municipal and school officials, and municipalities and school districts shall be immune from civil and criminal liability for good faith conduct under this chapter, including any decision to provide or not provide affirmative notification to the public pursuant to subparagraph IV(c). Nothing in this paragraph shall be deemed to grant any such immunity to any person for that person's reckless or wanton conduct.

VI.(a) Any individual required to be registered whose name and information is contained on the public list described in paragraph III and who is required to register as a result of any violation or attempted violation of RSA 632-A:3, II in effect prior to January 1, 2007, or RSA 632-A:2, III if the acts constituting the pattern were in violation of RSA 632-A:3, II in effect prior to January 1, 2007, provided that the age difference between the individual required to register and the victim was 4 years or less at the time of the offense and the person has no prior adjudications requiring registration under RSA 651-B:2, may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the public registration requirement contained in RSA 651-B:7. This application shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 5 years after the date of release. After review of the application, the court may schedule a hearing. Prior to granting any petition to remove an offender from the public list, the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family and permit those parties to be heard on the petition. If the court denies the offender's petition, the offender may not file another application pursuant to this paragraph for 5 years from the date of the denial and shall include a risk assessment prepared at the offender's expense.

(b) The court shall provide notice of the application for review under this section to the victim within 30 days of any hearing. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally or by counsel and may reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the public registry requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the public registry requirement under this section will assist the individual in the individual's rehabilitation and will be consistent with the public welfare. If an application for review is denied, any subsequent application may be filed only where good cause is shown, consistent with the provisions of this section. A decision granting an application for review under this section shall not remove any of the registration requirements contained in RSA 651-B:6.

334:5 Registration of Criminal Offenders. Amend RSA 651-B:9, IV to read as follows<sup>JD SUPRA</sup>  
Document hosted at <http://www.jdsupra.com/post/documentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

IV. The penalties imposed under paragraphs I-III shall not apply to juveniles required to register pursuant to RSA 651-B:1, [~~VII(a)(3) or (4)~~] **XI(a)(3) or (4)**. The court with jurisdiction over such juveniles may impose an appropriate disposition for a violation of this section.

334:6 Registration of Criminal Offenders; Hearing and Fees. RSA 651-B:10 and RSA 651-B:11 are repealed and reenacted to read as follows:

651-B:10 Hearing.

I. Any offender required to register for an offense committed in another state, country, territory, or tribal territory, or under federal law that is determined to be a reasonably equivalent offense to an offense listed RSA 651-B:1, V(a) or RSA 651-B:1, VII(a) or (b) may appeal that determination to the commissioner. The offender shall, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. The offender shall have the right to appeal the commissioner's decision in superior court.

II. Any offender required to register for an offense in the state of conviction pursuant to RSA 651-B:1, V(c), RSA 651-B:1, VII(d), or RSA 651-B:1, XI(a)(4) may petition the superior court for a hearing to review the registration requirement. In determining whether the offender should be required to register, the court may consider the facts of underlying the out-of-state conviction, the offender's prior criminal history, the extent to which public safety would be furthered by requiring the offender to register, and any other relevant information. If the court determines that the offender is required to register, the court shall determine whether the offender is required to register as a tier I, tier II, or tier III offender. In determining the appropriate tier, the court shall consider the nature of other offenses that are currently listed in each tier, the seriousness of the offender's offense, the extent to which public safety would be furthered, whether the victim was a minor when the offense occurred, and any other relevant factors. The hearing at which such a determination is made shall comply with due process requirements, including a right to appeal the findings. The court shall provide the defendant an opportunity to be heard on the issue and shall state on the record the reasons for its findings and the reasons for requiring registration.

651-B:11 Registration Fee.

I. An offender shall pay a fee of \$50 to the department within 10 days of the registration that occurs within the month of the anniversary of his or her birth. Such payment shall be

made in person or shall be mailed to the department. The department shall retain this amount to be used to defray the costs of maintaining the sex offender registry. The funds shall be nonlapsing and shall be continually appropriated to the department for such use. The department shall forward the remaining \$10 to the law enforcement agency which registered the offender within the month of the anniversary of the offender's birth to defray any costs associated with implementing the provisions of this chapter. The department shall forward these fees to the registering law enforcement agencies in a manner determined by the department but no less frequently than once a year.

II. An offender who cannot afford to pay the fee shall, within 10 days of registration, request a waiver of the fee and a hearing on the matter before the commissioner. In order to be considered for a waiver, the offender shall submit a financial affidavit on a form provided by the department. The division may at its discretion request such a waiver on behalf of an offender. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A, unless the commissioner or commissioner's designee determines a hearing is not necessary and waives the fee based on the offender's financial affidavit, or at the written request of the division. At the hearing, the burden shall be on the offender to prove that he or she is indigent. The offender may appeal the commissioner's decision to the superior court. Under no circumstances shall the offender's request for a hearing or indigency relieve the offender of the obligation to register as required pursuant to this chapter.

III. Notwithstanding RSA 651-B:9, an offender who violates the provisions of this section shall be guilty of a violation for a first offense and a misdemeanor for a second or subsequent offense.

334:7 New Paragraph; Violation of Privacy. Amend RSA 644:9 by inserting after paragraph III the following new paragraph:

III-a. A person is guilty of a misdemeanor if, for the purpose of arousing or gratifying the person's sexual desire, he or she knowingly views another person, without that person's knowledge or consent, in a place where one would have a reasonable expectation of privacy. For purposes of this paragraph, "views" means looking at another person with the unaided eye or any device intended to improve visual acuity.

334:8 Sexual Assault and Related Offenses; Definitions. Amend RSA 632-A:1, IV-V to read as follows:

IV. "Sexual contact" means the intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts, including *emissions, tongue, anus*, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or

gratification.

V. **(a)** “Sexual penetration” means:

~~[(a)]~~ **(1)** Sexual intercourse; or

~~[(b)]~~ **(2)** Cunnilingus; or

~~[(c)]~~ **(3)** Fellatio; or

~~[(d)]~~ **(4)** Anal intercourse; or

~~[(e)]~~ **(5)** Any intrusion, however slight, of any part of the actor’s body, ***including emissions***, or any object manipulated by the actor into genital or anal openings of the victim’s body; or

~~[(f)]~~ **(6)** Any intrusion, however slight, of any part of the victim’s body, ***including emissions, or any object manipulated by the victim*** into ***the oral***, genital, or anal openings of the actor’s body; ***or***

~~[(g)]~~ **(7)** Any act which forces, coerces, or intimidates the victim to perform any sexual penetration as defined in subparagraphs ~~[(a)-(f)]~~ **(1)-(6)** on the actor, on another person, or on himself.

~~[(h)]~~ **(b)** ***Emissions include semen, urine, and feces.*** Emission is not required as an element of any form of sexual penetration.

***(c) “Objects” include animals as defined in RSA 644:8, II.***

334:9 Felonious Sexual Assault. Amend RSA 632-A:3, II to read as follows:

II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is ~~[3]~~ **4** years or more; or

334:10 Offenses Against the Family; Incest. Amend RSA 639:2, I to read as follows:

I. A person is guilty of a class B felony if he ***or she*** marries or ~~[has sexual intercourse]~~ ***engages in sexual penetration as defined in RSA 632-A:1, V***, or lives together with, under the representation of being married, a person ***18 years or older*** whom he ***or she*** knows to be his ***or her*** ancestor, descendant, brother, or sister, of the whole or half blood,

or an uncle, aunt, nephew, or niece; provided, however, that no person under the age of 19 shall be liable under this section if the other party is at least 3 years older at the time of the act. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.

334:11 License Suspension and Revocation. Amend the section heading of RSA 263:56-a to read as follows:

263:56-a Suspension or Revocation for Default, ***Noncompliance***, or Nonpayment of Fine.

334:12 New Subparagraph; License Suspension and Revocation. Amend RSA 263:56-a, I by inserting after subparagraph (d) the following new subparagraph:

(e) Is a sexual offender as defined in RSA 651-B:1, IV or an offender against children as defined in RSA 651-B:1, VI, and fails to comply with the registration requirements under RSA 651-B, and where the failure to comply persists for more than 30 days, the offender's driver's license or resident or nonresident driving privileges shall be suspended or revoked by the director under this section, provided, that the department shall first attempt to notify the offender in person, or by first class mail, return receipt requested, sent to the offender's last known address, that he or she is in violation of the registration requirements and that his or her driving privileges will be suspended or revoked if he or she fails to comply with the registration requirements within 15 days of the department's attempted notice of noncompliance.

334:13 New Paragraph; Aggravated Felonious Sexual Assault; Blood Relationships. Amend RSA 632-A:2 by inserting after paragraph III the following new paragraph:

IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632-A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.

334:14 Sexual Assault. Amend RSA 632-A:4, I(c) to read as follows:

(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is [3] **4** years or less.

334:15 Effective Date. This act shall take effect January 1, 2009.

**Approved: July 7, 2008**

**Effective Date: January 1, 2009**

## CHAPTER 62

### HB 1130 – FINAL VERSION

05Mar2008... 0215h

2008 SESSION

08-2011

03/09

#### HOUSE BILL **1130**

AN ACT relative to repealed DWI laws.

SPONSORS: Rep. Tholl, Coos 2; Rep. Welch, Rock 8; Rep. W. Knowles, Straf 6

COMMITTEE: Criminal Justice and Public Safety

#### ANALYSIS

This bill inserts references to repealed DWI statutes into certain motor vehicle statutes.

This bill is a request of the department of justice.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

05Mar2008... 0215h

08-2011



03/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to repealed DWI laws.

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

62:1 Habitual Offender. Amend RSA 259:39, I(q) to read as follows:

(q) Conviction of any offense specified in RSA 265:54;

***(r) Conviction of any offense specified in RSA 265:82; or******(s) Conviction of any offense specified in RSA 265:82-a.***

62:2 Driving After Revocation or Suspension. Amend RSA 263:64, IV to read as follows:

IV. Any person who violates this section by driving or attempting to drive a motor vehicle in this state during the period of suspension or revocation of his or her license or driving privilege for a violation of RSA 265:79 shall be guilty of a misdemeanor. Any person who violates this section by driving or attempting to drive a motor vehicle or by operating or attempting to operate an OHRV or snowmobile in this state during the period of suspension or revocation of his or her license or driving privilege for a violation of RSA 265-A:2, I, RSA 265-A:3, [ø] RSA 630:3, II, ***RSA 265:82, or RSA 265:82-a*** shall be guilty of a misdemeanor and shall be sentenced to imprisonment for a period not less than 7 consecutive 24-hour periods to be served within 6 months of the conviction, shall be fined not more than \$1,000, and shall have his or her license or privilege revoked for an additional year. No portion of the minimum mandatory sentence of imprisonment shall be suspended by the court. No case brought to enforce this paragraph shall be continued for sentencing for longer than 35 days. No person serving the minimum mandatory sentence under this paragraph shall be discharged pursuant to authority granted under RSA 651:18, released pursuant to authority granted under RSA 651:19, or in any manner, except as provided in RSA 623:1, prevented from serving the full amount of such minimum mandatory sentence under any authority granted by title LXII or any other provision of law.

62:3 New Section; Incorporation of Former, Repealed Statutes. Amend RSA 265-A by inserting after section 1 the following new section:



## 265-A:1-a Incorporation of Former, Repealed Statutes.

I. Any reference to a prior violation of, or conviction under, RSA 265-A:2 or RSA 265-A:3 shall be read to include violations of, and convictions under, the former, repealed versions of those statutes.

II. Any reference to a prior administrative license suspension under RSA 265-A:30 shall be read to include proceedings under the former, repealed version of that statute.

III. Any reference to a prior refusal of consent under RSA 265-A:14 shall be read to include a refusal under the former, repealed version of that statute.

IV. In any statute, any reference to a revocation, suspension, or conviction pursuant to a section of RSA 265-A shall be read to include a revocation, suspension, or conviction pursuant to the former, repealed version of the statute.

62:4 Annulment of Criminal Records. Amend the introductory paragraph of RSA 651:5, III to read as follows:

III. Except as provided in RSA 265-A:21 or in paragraphs V and VI, any person convicted of an offense may petition for annulment of the record of arrest, conviction, and sentence when the petitioner has completed all the terms and conditions of the sentence and has thereafter been convicted of no other crime, except a motor vehicle offense classified as a violation other than driving while intoxicated under RSA 265-A:2, I, ***RSA 265:82, or RSA 265:82-a*** for a period of time as follows:

62:5 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 21, 2008

Effective Date: July 20, 2008

**CHAPTER 149**

**HB 1343 – FINAL VERSION**

05Mar2008... 0238h

2008 SESSION

08-2611

09/03

HOUSE BILL **1343**

AN ACT prohibiting the placing on file or masking of convictions incurred by holders of commercial driver licenses or persons required to hold such licenses.

SPONSORS: Rep. R. Williams, Merr 11

COMMITTEE: Transportation

AMENDED ANALYSIS

This bill removes the discretion of the courts to place on file, or otherwise mask, convictions incurred by holders of commercial driver licenses or persons required to hold such licenses.

This bill is a joint request of the department of transportation and the department of safety.

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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.

05Mar2008... 0238h

08-2611

09/03

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT prohibiting the placing on file or masking of convictions incurred by holders of commercial driver licenses or persons required to hold such licenses.

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

149:1 New Section; Prohibition on Placing on File or Masking Convictions Incurred by Holders of Commercial Driver Licenses or Persons Required to Hold Such Licenses. Amend RSA 262 by inserting after section 42 the following new section:

262:42-a Prohibition on Placing on File or Masking Convictions Incurred by Holders of Commercial Driver Licenses or Persons Required to Hold Such Licenses. The court shall not place on file, mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent the conviction of a holder of a commercial driver license, or a person required to hold a commercial driver license, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

149:2 Effective Date. This act shall take effect January 1, 2009.

Approved; June 6, 2008

Effective Date: January 1, 2009

**CHAPTER 256**

**HB 1311 – FINAL VERSION**

05/14/08 1734s

2008 SESSION

08-2498

03/09

HOUSE BILL ***1311***

AN ACT relative to impaired driver intervention programs.

SPONSORS: Rep. Almy, Graf 11; Rep. Butynski, Ches 4; Rep. Welch, Rock 8; Rep. Tholl, Coos 2; Rep. L. Hammond, Graf 11

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill makes various changes to statutes relating to the administration of impaired driver intervention programs. This bill also establishes a commission to examine driving while impaired education and intervention programs.

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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.

05/14/08 1734s

08-2498

03/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to impaired driver intervention programs.

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

256:1 Aggravated DWI; Intervention Program. Amend RSA 265-A:18, I(b)(3) to read as follows:

(3) Sentenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive ~~[24-hour periods]~~ **days** shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40, which sentence shall begin no later than 21 days after conviction. In the event that the state-operated 7-day multiple DWI offender intervention detention center has no available space, the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 7 consecutive ~~[24-hour periods]~~ **days** or such other time as the court may order;

256:2 Aggravated DWI; Bodily Injury Offenses; Intervention Program. Amend RSA 265-A:18, I(c)(3) to read as follows:

(3) Sentenced to a mandatory sentence of not less than 21 consecutive days of which 14 consecutive 24-hour periods shall be served in the county correctional facility followed by 7 consecutive ~~[24-hour periods]~~ **days** served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40, which sentence shall begin no later than 21 days after conviction. In the event that the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services, and the remainder of the sentence may be deferred at the court's discretion. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 7 consecutive ~~[24-hour periods]~~ **days** or such other time as the court may order. The court may, at the satisfactory completion of

any ordered treatment, suspend any remaining deferred sentence. Failure to successfully complete any court-ordered intervention program or recommended treatment shall result in the imposition of any remaining deferred sentence; and

256:3 Second Offense DWI; Intervention Program. Amend RSA 265-A:18, IV(a)(3) to read as follows:

(3)(A) If the complaint alleges that the prior conviction occurred within 2 years preceding the date of the second offense, the person shall be sentenced to a mandatory sentence of not less than 37 consecutive days of which 30 consecutive 24-hour periods shall be served in the county correctional facility followed by 7 consecutive ~~[24-hour periods]~~ **days** to be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40 within 21 days after conviction, except that in circumstances where the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 30 consecutive 24-hour periods or such other time as the court may order.

(B) If the complaint alleges that the prior conviction occurred more than 2 but not more than 10 years preceding the date of the second offense, the person shall be sentenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive ~~[24-hour periods]~~ **days** shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40, which sentence shall begin no later than 21 days after conviction. In the event that the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 7 consecutive ~~[24-hour periods]~~ **days** or such other time as the court may order.

256:4 Intervention Programs; Hearings. Amend RSA 265-A:18, VII(d)-(e) to read as follows:

(d) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has **successfully** completed ~~[attendance at]~~ the I.D.I.P., the M.O.P., or an equivalent

program, ***including, but not limited to, that he or she has met all further counseling requirements of the program and that he or she has paid all assessment*** program fees. The presumption may be overcome by a hearing requested by the department, or the I.D.I.P., the M.O.P., or an equivalent program, with notice to ***the person*** and an opportunity ***for the person*** to be heard [~~by the person~~], where the department and/or the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

(e) The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing of any further treatment it deems necessary in order to be considered a completed program before a license suspension should be restored. The department of safety shall notify the licensee of his or her ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing within 5 days after the [end] ***successful completion, including meeting all further counseling requirements***, of the program attended by the licensee.

256:5 Reference Changed. Amend RSA 265-A:39, I to read as follows:

I. Except as provided in paragraph IV, the commissioner of the department of health and human services shall be responsible for biennially approving the impaired driver intervention programs and 7-day residential intervention programs equivalent to the multiple DWI offender intervention detention center program (M.O.P.) which persons convicted under RSA 265-A:2 or RSA 265-A:3 shall attend in order to regain their driver's licenses or driving privileges; but the commissioner of the department of health and human services shall not approve any impaired driver intervention program unless such program is conducted without cost to the state. Notwithstanding RSA 6:12, any fees collected under subparagraph [V(e)] ***IV(g)*** of this section shall be placed in a nonlapsing revolving account and shall be used by the commissioner for the purposes of this subdivision only.

256:6 Impaired Driver Intervention Programs; Rules. Amend RSA 265-A:39, IV-V to read as follows:

IV. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the impaired driver intervention programs and those programs equivalent to the M.O.P. as required in RSA 265-A:18 and RSA 265-A:42 with respect to:



(a) Procedures and forms to be followed in order for drivers who have completed ~~supra~~ <sup>JD SUPRA™</sup> programs to regain their licenses or driving privileges. <http://www.icsupra.com/post/documentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

(b) Place of business and areas of the state in which approved programs may operate.

(c) Records and reports.

(d) Schedule of fees and charges.

~~(e) [Such other matters as the commissioner of the department of health and human services and the commissioner of safety may prescribe for the protection of the public.~~

~~V. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the operation of impaired driver intervention programs with respect to:~~

~~(a)]~~ Course content and standards of instruction.

~~[(b)]~~ **(f)** Certification and recertification of instructors.

~~[(c)]~~ **(g)** A per client fee to be paid by program providers sufficient to cover the costs of monitoring course content, establishing and maintaining standards of instruction, data collection, and administrative support.

~~[(d)]~~ **(h)** Any other matter related to the proper administration of this section *and the protection of the public*.

256:7 Multiple DWI Offender Intervention Detention Center Program; Rules. Amend RSA 265-A:40, V to read as follows:

V. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the operation of the 7-day multiple DWI offender intervention detention center program with respect to:

(a) Program curriculum and content.

~~(b) [Bed availability schedules.~~

~~(c)]~~ Any other matter related to the proper administration of this section.

256:8 Impaired Driver Intervention Programs; Successful Completion. Amend RSA 265-



A:42, III to read as follows:

III. Successful completion shall also include ***attendance at the I.D.I.P., the M.O.P., or an equivalent program*** and payment of all assessed I.D.I.P., M.O.P., and equivalent program fees, except in the case of attendance at programs operated by the department of corrections. Failure of the offender to make full payment of the assessed fee may also result in petition for contempt of court charges against the offender.

256:9 Impaired Driver Intervention Programs; Hearings. Amend RSA 265-A:42, V to read as follows:

V.(a) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has ***successfully*** completed [~~attendance at~~] the I.D.I.P., the M.O.P., or an equivalent program, ***including, but not limited to, that he or she has met all further counseling requirements of the program*** and that he or she has paid all assessed program fees. The presumption may be overcome by a hearing requested by the department, or the I.D.I.P., the M.O.P., or an equivalent program, with notice to ***the person*** and an opportunity ***for the person*** to be heard [~~by the person~~], where the department and/or the I.D.I.P., the M.O.P., or an equivalent program, shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

(b) The I.D.I.P., the M.O.P., or an equivalent program shall inform the department in writing of any further treatment it deems necessary in order to be considered a completed program before a license suspension should be restored. The department shall notify the licensee of his or her ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.I.P., the M.O.P., or an equivalent program shall inform the department in writing within 5 days after the [~~end~~] ***successful completion, including meeting all further counseling requirements***, of the program attended by the licensee.

256:10 Commission to Examine Driving While Impaired Education and Intervention Programs.

I. There is hereby established a commission to examine driving while impaired education and intervention programs. The members of the commission shall be as follows:

(a) Three members of the house of representatives, one of whom shall be from the criminal

justice and public safety committee, appointed by the speaker of the house of representatives.

- (b) The commissioner of the department of safety, or designee.
- (c) The administrative judge of the district court, or designee.
- (d) The commissioner of the department of health and human services, or designee.
- (e) The chairman of the liquor commission, or designee.
- (f) Two treatment providers, one of whom operates an impaired driver intervention program, appointed by the governor.
- (g) An attorney from a county attorney's office, appointed by the governor.
- (h) A municipal prosecutor, appointed by the governor.
- (i) A representative from an alcohol recovery program, appointed by the governor.
- (j) A representative from an advocacy group against drunk driving, appointed by the governor.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

III. The commission shall examine driving while impaired education and intervention programs, including the multiple DWI offender intervention detention center program, and offer recommendations for enhancement of programs including the re-organization of the current operation and structure, if required. The commission shall identify and consider the full range of legislative and policy strategies that may be effective in enhancing or restructuring intervention and education programs for those caught driving while impaired, including the multiple DWI offender intervention detention center program. In its deliberation, the commission shall seek input from individuals or entities that the commission deems relevant to its study. The commission shall consider, but not be limited to, the following topics:

- (a) Conducting client assessments of addiction and treatment needs at the time of arraignment or within 48 hours of arrest.
- (b) Referral to treatment programs or early intervention and education and subsequent

(c) Review of sentencing based on client adherence to a treatment plan and reduced risk of recidivism.

(d) Offering additional case management or treatment, as needed.

(e) Incentives to be built into the system for individuals to seek early care.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section.

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2008.

256:11 Effective Date.

I. Section 10 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

Approved: June 26, 2008

Effective Date: I. Section 10 shall take effect June 26, 2008.

II. Remainder shall take effect August 25, 2008

**CHAPTER 260**

**SB 236 – FINAL VERSION**

02Jan2008... 2408h

2008 SESSION

07-1121

09/04

SENATE BILL **236**

AN ACT extending the authority for police mutual aid.

SPONSORS: Sen. Letourneau, Dist 19; Rep. Packard, Rock 3

COMMITTEE: Public and Municipal Affairs

AMENDED ANALYSIS

This bill expands the circumstances under which police officers of a municipality may render assistance to police officers in another municipality.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

02Jan2008... 2408h

07-1121

09/04

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

## AN ACT extending the authority for police mutual aid.

<http://www.jdsupra.com/post/documentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

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

260:1 Police Mutual Aid Extended Authority. Amend RSA 105:13 to read as follows:

105:13 Extended Authority.

***I.*** The authority of any duly authorized police officer, constable or watchman of any town ***or city*** shall extend to any other city or town in the state, provided that the chief law enforcement officer of the requesting town or city has executed with the chief law enforcement officer of the responding town ***or city*** a written agreement which sets forth the terms and conditions under which such assistance may be requested or rendered. The executed agreement shall constitute authorization for every request for assistance, and for any assistance rendered in accordance with the terms and conditions of the written agreement, regardless of whether the responding police officer, constable, or watchman is named in the agreement. In an emergency situation, the ranking on-duty law enforcement official of a town or city is authorized to make an oral request for assistance to the ranking on-duty law enforcement official in the responding town, subject to the terms and conditions of such written agreement, and the authority of the responding police officer, constable, or watchman shall extend to the requesting town. The written agreement shall remain in full force and effect until terminated by the mutual consent of the chief law enforcement officers of each town or city, or until 10 days after the chief law enforcement officer of one town or city has received notification from the chief law enforcement officer of the other town or city of his ***or her*** intention to terminate.

***II.*** ***Where no written agreement exists or no officer is available, any duly authorized police officer, constable, or watchman shall have temporary police authority in another jurisdiction in the state, when requested by a law enforcement officer from such jurisdiction in the state to render assistance to such officer under such officer's direction in an emergency for the purposes of making an arrest or effecting custody of a detainee, conducting a search, quelling a disturbance, providing traffic or crowd control, or securing a crime scene, until relieved by the requesting officer or otherwise directed by the ranking on-duty officer of the requesting jurisdiction.***

***III.*** ***Where no written agreement exists or no officer is available, any duly authorized police officer, constable, or watchman from a nearby town or city may exercise temporary police authority as necessary to respond to a crime in progress, traffic accident, natural or human-caused disaster, disturbance in progress, or other emergency, if requested by a public safety dispatch center authorized to dispatch for the jurisdiction where the event is occurring, because there is no local officer or state trooper available for immediate response and in the judgment of the dispatch center the public safety requires an immediate response. Such officer's authority shall terminate when relieved by an officer with authority in the jurisdiction receiving the assistance, unless the officer with authority requests assistance pursuant to paragraph II.***

***IV.*** ***When providing assistance under this section the officer shall remain an employee of his***

*or her respective department.*

260:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 26, 2008

Effective Date: August 25, 2008

**CHAPTER 316**

**SB 379 – FINAL VERSION**

03/20/08 0963s

16Apr2008... 1272h

2008 SESSION

08-2657

03/05

SENATE BILL **379**

AN ACT relative to boating while intoxicated and transporting alcoholic beverages by a minor.

SPONSORS: Sen. Letourneau, Dist 19; Sen. Clegg, Dist 14; Sen. Barnes, Dist 17; Rep. Packard, Rock 3; Rep. Waterhouse, Rock 4

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies certain laws relating to boating while intoxicated, provides that a boater who refuses to submit to a blood alcohol test shall lose his or her boating privileges in addition to losing his or her driving privileges, and extends the prohibition on minors transporting alcoholic beverages to boats.

This bill is a request of the department of safety.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

03/20/08 0963s

16Apr2008... 1272h

08-2657

03/05

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to boating while intoxicated and transporting alcoholic beverages by a minor.

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

316:1 New Paragraph; Alcohol or Drug Impairment; Definitions; Operate. Amend RSA 265-A:1 by inserting after paragraph IV the following new paragraph:

V. "Operate," when used in relation to a boat, means to drive, paddle, row, or exercise control over any boat unless the boat is at anchor, docked, made fast, or moored.

316:2 Refusal of Consent; Boating. Amend RSA 265-A:14, IV to read as follows:

IV. The provisions and penalties of this section, relative to the refusal of consent, shall apply to any person under arrest for any violation or misdemeanor involving the operation of a boat~~[, after a hearing]~~ and upon satisfactory proof of the following:

- (a) That the authorized agent or peace officer had reasonable grounds to believe the arrested person had been operating, had been attempting to operate, or was in actual physical control of a boat upon the public waters of this state while under the influence of intoxicating liquor or controlled drugs or any combination thereof;
- (b) That the person has been arrested;
- (c) That the person refused to submit to the test upon request of the authorized agent or peace officer;
- (d) That the agent or officer informed the person arrested that his or her refusal to submit to such a test would ~~[constitute a violation]~~ **result in the loss of his or her privilege to operate a boat on the waters of the state and the loss of his or her privilege to operate a motor vehicle on the ways of this state;** and
- (e) That the agent or officer informed the arrested person of his or her right to have a similar test or tests conducted by a person of his or her own choosing.



***V. If a person's license or privilege to drive is suspended under paragraph IV, the person's privilege to operate a boat on the waters of the state shall also be suspended for the same period of time.***

316:3 Loss of Motorboat Privileges; Reference Changed. Amend RSA 265-A:20 to read as follows:

265-A:20 Loss of Motorboat Privileges. Any person who is convicted of a violation of RSA 265-A:2, [H] ***I*** involving a motor vehicle shall lose the privilege to operate a motorboat on the waters of this state for a period of one year from the date of conviction.

316:4 Transportation of Alcoholic Beverages by a Minor. Amend RSA 265-A:45 to read as follows:

265-A:45 Transportation of Alcoholic Beverages by a Minor.

I. Notwithstanding RSA 265-A:44, II, no driver under the age of 21 shall, except when accompanied by a parent, legal guardian, or legal age spouse, transport any liquor or beverage in any part of a vehicle. A driver violating this section may have his or her license or privilege to drive suspended for 60 days.

***II. No person operating a boat while under the age of 21 shall, except when accompanied by a parent, legal guardian, or legal age spouse, transport any liquor or beverage in any part of a boat with an intent to consume such liquor or beverage. Anyone violating this paragraph may, following a hearing, have his or her privilege to operate a boat on the waters of the state suspended for 90 days and may additionally have his or her license or privilege to drive suspended for 90 days.***

***III.*** The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 175:1. "Legal age spouse" means a person 21 years of age or older.

[H] ***IV.*** This section shall not apply to a driver under 21 years of age employed under RSA 179:23.

316:5 Repeal. RSA 265-A:19, V, relative to fines for boating while intoxicated, is repealed.

316:6 Effective Date. This act shall take effect upon its passage.

Approved: July 2, 2008

Effective Date: July 2, 2008

## CHAPTER 353

### SB 433 – FINAL VERSION

03/20/08 1065s

30Apr2008... 1391h

06/04/08 1969CofC

#### 2008 SESSION

08-2811

08/01

### SENATE BILL **433**

AN ACT relative to confidential communications between a physician and a patient.

SPONSORS: Sen. Foster, Dist 13; Rep. W. Knowles, Straf 6

COMMITTEE: Judiciary

#### ANALYSIS

This bill excludes the release of urine samples and the results of laboratory tests for drugs from the law regarding confidential communications between a physician and a patient.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

03/20/08 1065s

30Apr2008... 1391h

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to confidential communications between a physician and a patient.

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

353:1 Confidential Communications; Test Results and Samples. Amend RSA 329:26 to read as follows:

329:26 Confidential Communications. The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying, or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A. This section shall also not apply to the release of blood *or urine* samples and the results of laboratory tests for *drugs or* blood alcohol content taken from a person [~~who is under~~] *for purposes of diagnosis and treatment in connection with the incident giving rise to the* investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

353:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 7, 2008

Effective Date: September 5, 2008

**CHAPTER 105**

**SB 400 – FINAL VERSION**

2008 SESSION

08-2719

03/09

SENATE BILL **400**

AN ACT relative to the authority of bail commissioners.

SPONSORS: Sen. Foster, Dist 13; Rep. W. Knowles, Straf 6

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies the authority of bail commissioners appointed by district courts.

This bill is a request of the supreme court.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

08-2719

03/09

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to the authority of bail commissioners.

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

105:1 Bail Commissioners; District Courts. Amend RSA 597:15-a to read as follows:

597:15-a District Courts. District courts may appoint 3 or more justices of the peace and quorum as commissioners authorized to fix and receive bail and other fines and fees as authorized by law in criminal or civil cases to be brought before [~~said courts as hereafter provided~~] ***the appointing court or any other district court.***

105:2 Effective Date. This act shall take effect upon its passage.

Approved: May 28, 2008

Effective Date: May 28, 2008

CHAPTER 117

<http://www.jdsupra.com/post/documentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

HB 1414-FN – FINAL VERSION

05/01/08 1516s

05/01/08 1653s

2008 SESSION

08-2068

09/01

HOUSE BILL **1414-FN**

AN ACT increasing the fee for bail commissioners.

SPONSORS: Rep. Mooney, Hills 19; Rep. Rowe, Hills 6; Rep. Barry, Hills 19; Rep. C. Christensen, Hills 19; Sen. Roberge, Dist 9

COMMITTEE: Ways and Means

ANALYSIS

This bill increases the fee for bail commissioners.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

05/01/08 1516s

05/01/08 1653s

08-2068

09/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT increasing the fee for bail commissioners.

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

117:1 Fee for Bail Commissioners. Amend RSA 597:20 to read as follows:

597:20 Fees. The bail commissioners in such cases shall be entitled to a fee of [~~\$30~~] **\$40**. However, clerks of court or members of their staffs who are bail commissioners shall be entitled to collect such fee only when called while not on active duty. In jurisdictions where the bail commissioner is a full-time salaried police officer, constable, sheriff, deputy sheriff, state police employee, or anyone else authorized to execute police powers, such person shall not receive the fee established in this section, but instead such amount shall be remitted to the town or city in which the [~~municipal or~~] district court is situated.

117:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 3, 2008

Effective Date: August 2, 2008

**CHAPTER 200**

**SB 487 – FINAL VERSION**

07May2008... 1331h

2008 SESSION

08-2829

09/03

SENATE BILL **487**

AN ACT clarifying the law regarding bail pending appeal.

SPONSORS: Sen. Foster, Dist 13

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill clarifies the law regarding bail pending appeal.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

07May2008... 1331h

08-2829

09/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*



## AN ACT clarifying the law regarding bail pending appeal.

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

200:1 Bail and Recognizances; Release or Detention of Defendant Pending Sentence or Appeal.  
RSA 597:1-a, III is repealed and reenacted to read as follows:

III.(a) The court shall order that a person found guilty of a felony and sentenced to a term of imprisonment and who has made a good faith representation that he or she shall file a timely appeal be detained, unless the person establishes and the court finds:

(1) By clear and convincing evidence, taking into consideration the nature of the crime and the length of the sentence imposed, that the person is not likely to fail to appear to answer the judgment following the conclusion of the appellate proceeding, or to pose a danger to himself or herself or to any other person or the community, or to intimidate witnesses, or otherwise to interfere with the administration of justice; and

(2) By a preponderance of the evidence that the appeal will not likely be frivolous or taken merely for delay.

(b) Upon making the findings specified in subparagraph (a), the court shall order the release of the person in accordance with the provisions of RSA 597:2.

200:2 Effective Date. This act shall take effect upon its passage.

Approved: June 11, 2008

Effective Date: June 11, 2008

# CHAPTER 114

## HB 589-FN – FINAL VERSION

02Jan2008... 2470h

04/17/08 1146s

### 2008 SESSION

07-0745

04/09

### HOUSE BILL **589-FN**

AN ACT relative to the calculation of concurrent and consecutive terms of imprisonment.

SPONSORS: Rep. L. Hammond, Graf 11; Rep. Charron, Rock 7

COMMITTEE: Criminal Justice and Public Safety

### AMENDED ANALYSIS

This bill establishes a method for the calculation of minimum and maximum concurrent and consecutive terms of imprisonment for the purpose of petitioning to suspend sentence.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

02Jan2008... 2470h

04/17/08 1146s

07-0745

04/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to the calculation of concurrent and consecutive terms of imprisonment.

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

114:1 Incarceration Under Suspended Sentence. Amend RSA 651:20, I(a) to read as follows:

(a) Any person sentenced to state prison ***for a minimum term of 6 years or more*** shall not bring a petition to suspend sentence until such person has served at least 4 years or 2/3 of his minimum sentence, whichever is greater, and not more frequently than every 3 years thereafter. ***Any person sentenced to state prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by the sentencing court. For the purposes of this subparagraph:***

***(1) For concurrent terms of imprisonment, the minimum term shall be satisfied by serving the longest minimum term imposed, and the maximum term shall be satisfied by serving the longest maximum term.***

***(2) For consecutive terms of imprisonment, the minimum terms of each sentence shall be added to arrive at an aggregate minimum term, and the maximum terms of each sentence shall be added to arrive at an aggregate maximum term.***

114:2 Effective Date. This act shall take effect January 1, 2009.

Approved: June 3, 2008

Effective Date: January 1, 2009

**CHAPTER 379****SB 507-FN – FINAL VERSION**

03/06/08 0857s

06/04/08 2079CofC

06/05/08 2179eba

## 2008 SESSION

08-2742

04/09

SENATE BILL ***507-FN***

AN ACT relative to criminal street gangs and establishing a commission to study the scope of criminal street gang violence in New Hampshire and methods of addressing such violence.

SPONSORS: Sen. Gatsas, Dist 16; Sen. Barnes, Dist 17; Sen. Cilley, Dist 6; Sen. Clegg, Dist 14; Sen. D'Allesandro, Dist 20; Sen. Downing, Dist 22; Sen. Foster, Dist 13; Sen. Gallus, Dist 1; Sen. Kenney, Dist 3; Sen. Odell, Dist 8; Sen. Roberge, Dist 9

COMMITTEE: Judiciary

## AMENDED ANALYSIS

This bill provides for extended terms of imprisonment for offenses committed by criminal street gang members and establishes the crime of criminal street gang solicitation. The bill also establishes a commission to study the scope of criminal street gang violence in New Hampshire and methods of addressing such violence.

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Explanation: Matter added to current law appears in ***bold italics***.

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

03/06/08 0857s

06/04/08 2079CofC

06/05/08 2179eba

08-2742

04/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to criminal street gangs and establishing a commission to study the scope of criminal street gang violence in New Hampshire and methods of addressing such violence.

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

379:1 Extended Term of Imprisonment; Criminal Street Gang Members. Amend RSA 651:6, I (o) and (p) to read as follows:

(o) Has purposely, knowingly, or recklessly with extreme indifference to the value of human life committed an act or acts constituting first degree assault as defined in RSA 631:1 against a person under 13 years of age where the serious bodily injury has resulted in brain damage or physical disability to the child that is likely to be permanent; [øø]

(p) Has committed murder as defined in RSA 630:1-b against a person under 13 years of age[-]; **or**

***(q) Has knowingly committed any of the following offenses as a criminal street gang member, or for the benefit of, at the direction of, or in association with any criminal street gang, with the purpose to promote, further, or assist in any such criminal conduct by criminal street gang members:***

***(1) Violent crime as defined in RSA 651:5, XIII.***

***(2) A crime involving the distribution, sale, or manufacture of a controlled drug under RSA 318-B:2.***

***(3) Class A felony theft where the property stolen was a firearm.***

***(4) Unlawful sale of a pistol or a revolver.***

**(5) Witness tampering.****(6) Criminal street gang solicitation as defined in RSA 644:20.**

379:2 Extended Term of Imprisonment; Criminal Street Gang Member Defined. Amend RSA 651:6, I-a to read as follows:

I-a. As used in this section[;]:

**(a)** “Law enforcement officer” [is] **means** a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail, or corrections institution, a probation-parole officer, a juvenile probation and parole officer, or a conservation officer.

**(b)** “*Criminal street gang member*” **means an individual to whom 2 or more of the following apply:**

**(1) Admits to criminal street gang membership;**

**(2) Is identified as a criminal street gang member by a law enforcement officer, parent, guardian, or documented reliable informant;**

**(3) Resides in or frequents a particular criminal street gang’s area and adopts its style of dress, its use of hand or other signs, tattoos, or other physical markings, and associates with known criminal street gang members; or**

**(4) Has been arrested more than once in the company of individuals who are identified as criminal street gang members by law enforcement, for offenses that are consistent with usual criminal street gang activity.**

**(c)** “*Criminal street gang*” **means a formal or informal ongoing organization, association, or group of 3 or more persons, which has as one of its primary objectives or activities the commission of criminal activity, whose members share a common name, identifying sign, symbol, physical marking, style of dress, or use of hand sign, and whose members individually or collectively have engaged in the commission, attempted commission, solicitation to commit, or conspiracy to commit 2 or more the following offenses, or a reasonably equivalent offense in another jurisdiction, on separate occasions within the preceding 3 years:**

**(1) Violent crimes, as defined in RSA 651:5, XIII;**

**(2) Distribution, sale, or manufacture of a controlled drug in violation of RSA 318-B:2;**

**(3) Class A felony theft;**

**(4) Unlawful sale of a pistol or revolver; or****(5) Witness tampering.**

379:3 New Section; Breach of Peace and Other Offenses; Criminal Street Gangs. Amend RSA 644 by inserting after section 19 the following new section:

644:20 Criminal Street Gang; Solicitation. Any person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang, as defined in RSA 651:6, I-a(c), shall be guilty of a class A felony.

379:4 Commission Established. There is established a commission to study the scope of criminal street gang violence in New Hampshire and methods of addressing such violence.

379:5 Membership and Compensation.

I. The members of the commission shall be as follows:

- (a) Three members of the house of representatives, one of whom shall be from the criminal justice and public safety committee and one of whom shall be from the finance committee, appointed by the speaker of the house of representatives.
- (b) One member of the senate, appointed by the president of the senate.
- (c) The governor, or designee.
- (d) The attorney general, or designee.
- (e) The commissioner of the department of corrections, or designee.
- (f) An individual responsible for enforcing the liquor laws in New Hampshire, appointed by the governor.
- (g) The director of the division for juvenile justice services, department of health and human services, or designee.
- (h) A representative from Child and Family Services of New Hampshire, appointed by the governor.
- (i) The director of the division of state police, department of safety, or designee.
- (j) The chief of police for the city of Manchester, or designee.

- (k) The chief of police for the city of Nashua, or designee.
- (l) The chief of police for the city of Rochester, or designee.
- (m) The chief of police for a town with a population of less than 10,000, appointed by the governor.
- (n) The president of the New Hampshire Association of Chiefs of Police, or designee.
- (o) The president of the New Hampshire Sheriffs Association, or designee.
- (p) The head of the Rockingham County Gang Task Force, or designee.
- (q) A representative of the New Hampshire Civil Liberties Union, appointed by the governor.
- (r) A representative of the New Hampshire Association of Criminal Defense Lawyers, appointed by the governor.
- (s) The United States Attorney for the District of New Hampshire, or designee.
- (t) The United States Marshal for the District of New Hampshire, or designee.
- (u) The head of the United States Drug Enforcement Agency task force in New Hampshire, or designee.
- (v) The head of the United States Department of Homeland Security in New Hampshire, or designee.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

379:6 Duties. The commission shall:

- I. Study the scope of criminal street gang violence in New Hampshire.
- II. Study the methods other states have used to address criminal street gang violence.
- III. Study the feasibility of establishing a unified statewide task force to respond to criminal street gang violence in New Hampshire.
- IV. Solicit the advice and expertise of any individual or organization with information relevant to the issue of criminal street gang violence.
- V. Study any other issues related to addressing criminal street gang violence that the commission deems necessary.



379:7 Chairperson; Quorum. The members of the study commission shall elect a chairperson among the members. The first meeting of the commission shall be called by the first named house member. The first meeting of the commission shall be held within 30 days of the effective date of this section. Seven members of the commission shall constitute a quorum.

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379:8 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2009.

379:9 Effective Date.

I. Sections 1-3 of this act shall take effect March 31, 2009.

II. The remainder of this act shall take effect upon its passage.

Approved: July 11, 2008

Effective Date: I. Sections 1-3 shall take effect March 31, 2009.

II. Remainder shall take effect July 11, 2008.

**CHAPTER 139**

**HB 1132 – FINAL VERSION**

06Feb2008... 0149h

04/17/08 1145s

2008 SESSION

08-2014

04/10

HOUSE BILL ***1132***

AN ACT creating an exception to the wiretapping statute for a recording device used in conjunction with a TASER or other similar electroshock device.

SPONSORS: Rep. Tholl, Coos 2; Rep. W. Knowles, Straf 6; Rep. Welch, Rock 8

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill creates an exception to the wiretapping and eavesdropping statute for audio and video recordings made by a device used by law enforcement personnel in conjunction with a TASER or other similar electroshock device.

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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.

06Feb2008... 0149h

04/17/08 1145s

08-2014

04/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT creating an exception to the wiretapping statute for a recording device used in conjunction with a TASER or other similar electroshock device.

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

139:1 New Subparagraph; Wiretapping and Eavesdropping; Exceptions. Amend RSA 570-A:2, II by inserting after subparagraph (k) the following new subparagraph:

(l) A law enforcement officer in the ordinary course of the officer's duties using any device capable of making an audio or video recording, or both, and which is attached to and used in conjunction with a TASER or other similar electroshock device. Any person who is the subject of such recording shall be informed of the existence of the audio or video recording, or both, and shall be provided with a copy of such recording at his or her request.

139:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 6, 2008

Effective Date: August 5, 2008

CHAPTER 145

<http://www.jdsupra.com/post/documentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

HB 1234 – FINAL VERSION

05Mar2008... 0363h

2008 SESSION

08-2362

04/09

HOUSE BILL **1234**

AN ACT establishing an affirmative defense to prosecution for a possession offense if a person has a lawful prescription for a controlled drug.

SPONSORS: Rep. Winters, Hills 17

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill establishes an affirmative defense to prosecution for a possession offense if a person has a lawful prescription for a controlled drug.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

05Mar2008... 0363h

08-2362

04/09

## STATE OF NEW HAMPSHIRE

<http://www.jdsupra.com/legaldocs/DocumentViewer.aspx?fid=146a18f3-0b77-48e5-978a-e6d3b96f5006>

*In the Year of Our Lord Two Thousand Eight*

AN ACT establishing an affirmative defense to prosecution for a possession offense if a person has a lawful prescription for a controlled drug.

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

145:1 New Paragraph; Controlled Drug Act; Acts Prohibited. Amend RSA 318-B:2 by inserting after paragraph XIII the following new paragraph:

XIV. It shall be an affirmative defense to prosecution for a possession offense under this chapter that the person charged had a lawful prescription for the controlled drug in question or was, at the time charged, acting as an authorized agent for a person holding a lawful prescription. An authorized agent shall mean any person, including but not limited to a family member or caregiver, who has the intent to deliver the controlled drug to the person for whom the drug was lawfully prescribed.

145:2 Effective Date. This act shall take effect January 1, 2009.

Approved: June 6, 2008

Effective Date: January 1, 2009

**CHAPTER 225**

**SB 90-FN – FINAL VERSION**

01/23/08 0147s

16Apr2008... 1170h

2008 SESSION

07-1145

04/01

SENATE BILL ***90-FN***

AN ACT relative to the penalty for impersonating a law enforcement officer.

SPONSORS: Sen. Gatsas, Dist 16; Sen. Downing, Dist 22; Sen. Barnes, Dist 17;  
Rep. Weyler, Rock 8; Rep. Hess, Merr 9; Rep. Oliver, Merr 9

COMMITTEE: Judiciary

ANALYSIS

This bill increases the penalty for impersonating a law enforcement officer from a misdemeanor to a class B felony.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

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

01/23/08 0147s

16Apr2008... 1170h

07-1145

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eight*

AN ACT relative to the penalty for impersonating a law enforcement officer.

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

225:1 Sheriffs and Constables; False Personation. Amend RSA 104:28-a to read as follows:

104:28-a False Personation. [~~A person is guilty of a misdemeanor if, not being a~~ **Any person who knowingly and falsely assumes or exercises the functions, powers, duties, or privileges incident to the office of** sheriff, deputy sheriff, state police officer, police officer of any city or town, or any other law enforcement officer or investigator employed by any state, country or political subdivision of a state or country, [~~he purposely pretends to be or assumes to act as such law enforcement officer or investigator, or if he purposely requests any other person to assist him in any matter belonging to the duty of such law enforcement officer or investigator~~] **or who wears or displays without authority any uniform, badge, or other identification by which such sheriff, officer, or investigator is lawfully identified, and with the intent to be recognized as such, shall be guilty of a class B felony.**

225:2 Railroad Police; Impersonating an Officer. Amend RSA 381:12 to read as follows:

381:12 Impersonating an Officer. Any person who impersonates a railroad police officer shall be guilty of a [~~misdemeanor~~] **class B felony.**

225:3 Effective Date. This act shall take effect January 1, 2009.

Approved: June 16, 2008

Effective Date: January 1, 2009