Bill as Introduced

HB 348 - AS INTRODUCED

2009 SESSION

09-0117
04/09

HOUSE BILL ***348***

AN ACT relative to criminal penalties and alternatives to incarceration.

SPONSORS: Rep. Kurk, Hills 7; Rep. Pratt, Hills 7; Rep. Craig, Hills 9

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill:

I. Requires the prosecuting attorney, in all misdemeanor or felony cases for which incarceration is a possible penalty but which do not involve the use or threat of force or violence, to submit to the court a written statement explaining why incarceration is necessary and why alternatives to incarceration would be unsuitable.

II. Authorizes the sentencing court or the superintendent of a county correctional facility to order the release of a person sentenced to incarceration for the purpose of participating in a day reporting or work release program or for home confinement.

III. Orders the commissioner of the department of corrections to close the Lakes Region facility in Laconia.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 348 - AS INTRODUCED

09-0117
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to criminal penalties and alternatives to incarceration.

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

1 New Paragraph; Classification of Crimes; Nonviolent Crimes. Amend RSA 625:9 by inserting after paragraph VIII the following new paragraph:

IX. In all misdemeanor or felony cases for which incarceration is a possible penalty but which do not involve the use or threat of force or violence, the prosecuting attorney may submit a written statement to the court explaining why incarceration is necessary and why alternatives to incarceration would be unsuitable. If the prosecuting attorney does not submit such a statement, the court shall not sentence the defendant to incarceration.

2 Employment of Offenders; Work Release. Amend RSA 30-B:20 to read as follows:

30-B:20 Work Release. A sentencing court ***at the time of sentencing or the superintendent of a county correctional facility at any time thereafter*** may order that any person sentenced to imprisonment in a county department of corrections facility may be released therefrom by the superintendent with the approval of the sentencing court at the time of sentence, or at any time during the term of sentence based on the rules and regulations of the county correctional facility for such purposes as the superintendent may deem conducive to his or her rehabilitation. Such release shall be for such terms or intervals of time and under such terms and conditions as may be permitted by the facility's rules and regulations or as the court may order. Any part of a day spent in the free community under such a release order shall be counted as a full day toward the serving of the sentence [~~unless otherwise provided by the sentencing court~~].

3 Discretionary Sentences; Release for Gainful Employment. Amend RSA 651:19 to read as follows:

651:19 Release for Purpose of Gainful Employment, Rehabilitation, or Home Confinement. A sentencing court ***at the time of sentencing or the superintendent of a county correctional facility at any time thereafter*** may order any person who has been committed to a correctional institution other than state prison under a criminal sentence may be released therefrom for the purpose of obtaining and working at gainful employment, for the performance of uncompensated public service as provided in RSA 651:68-70, under the terms of a day reporting program, provided the correctional facility has a day reporting program, or to serve the sentence under home confinement, provided the correctional facility has a home confinement program. If the superintendent determines the person is inappropriate for such release, the court shall be notified and, at the request of the defendant, a hearing may be scheduled. In any case, the defendant shall first serve 14 consecutive days prior to eligibility for home confinement, or for such other purpose as

the [~~court~~] ***superintendent*** may deem conducive to his or her rehabilitation, for such times or intervals of time and under such terms and conditions as the rules and regulations of the correctional facility may allow or as the court may order. Any part of a day spent in the free community, or in home confinement, under such a release order shall be counted as a full day toward the serving of the sentence [~~unless otherwise provided by the court~~]. If a person violates the terms and conditions laid down for his or her conduct, custody, and employment, he or she shall be returned to the correctional facility. The superintendent may then require that the balance of the person's sentence be spent in actual confinement.

4 Discretionary Sentences; Day Reporting Program. Amend RSA 651:19-a to read as follows:

651:19-a Day Reporting Program.

[~~I.~~] The superintendent of a county correctional facility may establish a day reporting program in lieu of incarceration for certain offenders as deemed appropriate by the superintendent. Such release shall be for such terms or intervals of time and under such terms and conditions as may be permitted by the facility's rules and regulations or as the court may order. Any part of a day spent in the free community under such a release order shall be counted as a full day toward the serving of the sentence [~~unless otherwise provided by the sentencing court.~~

~~II. The sentencing court may order any person who has been committed to a correctional institution other than state prison to be released therefrom for the purpose of participating in a day reporting program, provided the county correctional facility has established such a program~~].

5 Lakes Region Facility Closure. The commissioner of the department of corrections shall close the Lakes Region facility in Laconia not later than January 1, 2010.

6 Applicability. Section 1 of this act shall apply to all cases in which an indictment is issued on or after the effective date of this act and to all individuals incarcerated on the effective date of this act.

7 Effective Date. This act shall take effect January 1, 2010.

LBAO
09-0117
02/24/09

HB 348 FISCAL NOTE

AN ACT relative to criminal penalties and alternatives to incarceration.

FISCAL IMPACT:

The Judicial Branch and Department of Corrections state this bill will have an indeterminable fiscal impact on state general fund expenditures in FY 2010 and each year thereafter. The New Hampshire Association of Counties states this bill may decrease county expenditures by an indeterminable amount in FY 2010 and each year thereafter. This bill will have no fiscal impact on local expenditures or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill amends laws to require a written statement from prosecuting attorneys to the court explaining why incarceration is necessary and why alternatives to incarceration would be unsuitable; allows a sentencing court or superintendent of a county superintendent of a correctional facility to order the release of a person sentenced to incarceration for the purpose of participating in a day reporting or work release program or for home confinement; and closes the Lakes Region facility in Laconia The Branch states the requiring a written statement from prosecuting attorneys to the court explaining why incarceration is necessary and why alternatives to incarceration would be unsuitable will have an indeterminable fiscal impact. The Branch states this bill does not specify when the written statement is to be provided to the court. If the written statement is provided at the time of sentencing, the Branch would not have any decreased costs and may have some increased costs associated with clerical time processing the written statement and judicial time reviewing the statement. If the written statement is provided at the time of filing of criminal charges, the bill would likely result in a savings for the Branch. The Branch states filing the statement at the outset of a case may result in some misdemeanor cases being charged as class B misdemeanors and some felony offenses being charged as misdemeanors, reducing processing costs for the Branch.

The Department of Corrections states it is unable to predict the number of cases that normally involve incarceration that would result in alternatives to incarceration as a result of this bill. The Department states the fiscal impact would be indeterminable for this part of the bill.

The Department states it estimated the cost to keep the Lakes Region Facility in Laconia open would require general fund expenditures of $12,212,748 in FY 2010 and $12,552,125 in FY 2011 and each year thereafter. The bill has an effective date of January 1, 2010, however, the Department assumes it will close the Lakes Region Facility effective July 1, 2009. The Department states it would still have some expenditures when the Lakes Region Facility is closed associated with moving the inmates to other parts of the correction system and maintaining the Lakes Region Facility after closure. For example, increasing the number of inmates located in the Berlin facility will result in increased costs associated with staff reassignments, food, current expense, and utilities and increased costs for the field division related to administrative home confinement. Overall, the Department states the closure of the Lakes Region Facility in Laconia will result in a decrease in general fund expenditures of $8,011,537 in FY 2010 and $8,553,668 in FY 2011 and each year thereafter.

The New Hampshire Association of Counties states this bill would require prosecuting attorneys to submit a statement to the court explaining why incarceration is necessary and authorizes superintendents of county correctional facilities to order the release of a person sentenced to incarceration for purposes of participating in day reporting, work release program, or home confinement. The Association is not able to predict how many individuals would be sentenced to alternative incarceration by the court or ordered to alternative incarceration by the county superintendents. The Association states to the extent an individual is not incarcerated, there would be a decrease in expenditures. The Association states the annual cost of incarceration in a county correctional facility is $30,165.

The Judicial Council states this bill will not have any direct impact on the indigent defense expenditures. The Council states the bill does not specify when the prosecutor must file the written memo and until there is a definitive and binding statement made that there is no potential for a loss of liberty at any stage of the proceeding, an individual is entitled to counsel.

Committee Minutes

HOUSE COMMITTEE ON
CRIMINAL JUSTICE AND PUBLIC SAFETY

BILL NUMBER: HB 348

BILL TITLE: Relative to criminal penalties and alternatives to incarceration.

DATE: March 17, 2009

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.

Rep. Stephen J. Shurtleff, Chairman

Speakers

10:00 AM

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB348 Date Feb. 19, 2009

Committee Criminal Justice & Public Safety

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep. Calvin Pratt	Hillborough 7		HB348	X	
Ronald Scaccia	PO Box 392 Greenville NH		NEPBA		X
Lt. Shanon Berwick	9D Jimtown Rd Gorham NH		NEPBA		X
LT Paul Lascio	Currier Rd London		848-5552		X
LT. Donald Buczek	EAST milan RD Berlin, NH				X
C.O. Darin Briggs	14 Scenic Dr Belmont NH		NEPBA		X
SGT. Gerald Ragassa	69 Lake Rd Gilford NH				X
CO Paul Hyson	63 LYLE GALE RD ALEXANDRIA NH				X
SGT Christopher Lover	18 Beech St. Laconia, NH 03246				X
CO R Chanter	365 CALEF Hill RD SANBORNTOW NH 03269				X
CO Andrew Hilson	12 Hemlock Drive Belmont NH 03220				X
Sgt. Joel M Pomerleau	81 Faith Ln Manchester NH 03103	(603)624-6785	NEPBA		X
Deirdre Briggs	Belmont NH				X
Claudia Gross	West St. Laconia NH 03246				X
Donald Rose	95 Laconia Rd Belmont NH 03220				X
Linda Small	47 main St apt 10 pittsfield N.H. 03263				X
David Smith	87 river rd Apt-19 Pittsfield NH 03263				X
Jason Carvalho	86 Falcmont St. Laconia NH 03246				X
Joshua LaFlamme	20 Picker ST Laconia, NH		HB348		X
Gary Lydick	2761 Lakeshore RD #22 Gilford NH		HB348		X
Sherwood DuBray	36 Brook Circle Loudon 738-4337		NH DOC		X
Bonnie Roberts	72 Alexander Road Londonderry NH 03053				X
DAN BOYNTON	- 267 Plumer Hill Road Alexandria				X

other side →

Paul Kristoffersen 20 O'Shea lane Laconia 524-2474 HB 348 CON

Tina Thurber 8 Ladybug Lane Franklin NH 934-3358 HB348 CON

Deborah Horan 68 Scenic View Drive, Plymouth, NH 536-9822 HB348 CON

Marguerite Wazeling Hillsborough City Atty 300 Chestnut St Manchester 627 5605 CON

Lynn Gale - 25 Capital St, Concord [+]

TIM MOQUIN 118 STERLING DR. FRANKLIN, NH 934-3306 CON

Jordan Ulery Hills-27

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 348

BILL TITLE: relative to criminal penalties and alternatives to incarceration.

DATE: February 19, 2009

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:03 a.m.

Time Adjourned: 1:40 p.m.

(please circle if present)

Committee Members: Reps. Shurtleff, Pantelakos, Berube, Robertson, Movsesian, Burridge, Cushing, Rodd, Chandley, B. McCarthy, M. Ryder, Welch, Charron, Fesh, Weare, Stevens, Villeneuve, Gagne, Swinford and Villette.

Bill Sponsors: Rep. Kurk, Hills 7; Rep. Pratt, Hills 7; Rep. Craig, Hills 9

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Craig - Co-sponsor.

- A lot of people sentenced improperly.
- Don't have enough treatment programs.
- Easy to be "tough on crime".

Rep. Kurk - Sponsor.

- Provided handout material.
- This is "one way" to solve the problem but leaves it to the Committee to decide.
- Deal "incrementally" not "holistically" with problem.
- "Embezzlement" is not a violent crime, but we incarcerate them in prison.
- Non-violent offenders should not go to prison, but to some other form of punishment.
- Will make a better balance between the punishment and the crime.
- 3 parts to the bill.
- Part 1 provides no incarceration unless the prosecutor requests it in writing with reasons therefore.
- Should have had a fiscal note. One is being prepared.
- Revamp the punishments.
- 3rd part of the bill allows superintendent to override the courts order by releasing inmates who meet specific requirements.

Subcommittee: Chair, Rep. Gene P. Charron, Welch, Stevens, Movsesian and Chandley

Ann Rice - Attorney General - (Opposes)

- Currently prosecution and defense argue sentencing. It's just not in writing.
- Negotiated plans agree to sentencing ahead of time.
- Creates a presumption on non-incarceration.
- Judge has and should have discretion in release of inmates.

***Marguerite Wageling** - N. H. County Attorney - (Opposes)

- Had written testimony.

Jim O'Mara - Hillsborough Supt. Of Jails - (Supports)

- Supports only Section II.

Claire Ebel - N. H. Civil Liberties Union - (Supports)

- Supports a sub-committee.

Katherine Cooper - N. H. Association of Criminal Defense Lawyers - (No position)

- Would like consideration of "14 days" at page 1, line 31.
- Page 2, line 1 "court" should be left in.

Nina Gardner - Judicial Council - (No position)

- Use bill as a vehicle for study of the issue.

Lt. Donald Buczek - N. H. Department of Corrections (DOC) - (Opposed)

- Closing Laconia will cause a "warehousing" factor at Berlin.

***Lt. Paul Cascio** - N. H. Department of Corrections (DOC) - (Opposed)

- Has written testimony.

Marc Hathaway - Sullivan County Attorney - (Opposes)

- Covered the same points as previous witnesses - Would not provide written testimony.

Denis Goddard - N. H. Liberty Alliance - (Supports)

Seifu Ragassa - My family - (Oppose)

Ralph Woekel - N. H. DOC/NEBPO (Union) - (Oppose)

- Covered points raised by earlier witnesses.

HB 348 Page Two (Continued)

Ralph Woekel - NHDOC/NEBPO (Union) (Continued)

- Band aid solution to long term problem.

***Tim Moquin** - NH DOC - (Oppose)

- Written testimony.

David Stevens - NHDOC - LRF - (Oppose)

- Officer Jeremy Charron was murdered by a "nonviolent" offender.
- How do you define violent and non-violent crime?
- Personally doesn't believe there is a non-violent inmate.
- Need more halfway houses.
- Probation and Parole are already over burdened.

Assistant Commissioner – Bill McGonagal - DOC - (No position)

- Fiscal impact of bill provided.
- Even with LRF closing – state will have to pay to heat and light if LRF closes.
- 80 to 90 positions will be lost.

Respectfully Submitted:

Rep. Stanley E. Stevens, Clerk
Rep. Lori Movsesian, Acting Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 348

BILL TITLE: relative to criminal penalties and alternatives to incarceration.

DATE:

LOB ROOM: 204 **Time Public Hearing Called to Order:**

Time Adjourned:

(please circle if present)

Committee Members: Reps. Shurtleff, Pantelakos, Berube, Robertson, Movsesian, Burridge, Cushing, Rodd, Chandley, B. McCarthy, M. Ryder, Welch, Charron, Fesh, Weare, Stevens, Villeneuve, Gagne, Swinford and Willette.

Bill Sponsors: Rep. Kurk, Hills 7; Rep. Pratt, Hills 7; Rep. Craig, Hills 9

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

HB 348 — 19 Feb 2009

Start: 1003
Finish: 1340

Rep Craig — co-sponsor

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sub comm.
Chm. Charron
Welch
Stevens
Mosesian
Chandley

Ann Rice Attorney General (opposes)

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Marguerite Wagling Hillsborough County Atty (opposes)

- had written testimony.

Jim O'Mara Hillsborough Supt. of Jails (supports)

- supports only section II

Claire Ebel NH Civil Liberties Union (supports)

- supports a sub-committee

Kathleen Cooper NH Assn of Criminal Defense Lawyers (no position)

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Nina Gardner Judicial Council (no position)

use bill as a vehicle for study of the issue.

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- band aid solution to long term problem

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- written testimony

David Stevens - NHDOC - LRF oppose

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- need more half way houses.
- Probation and Parole are already over burdened.

Asst. Commissioner - Bill McGonagal - D.O.C. no position

- fiscal impact of bill provided.
- ∴ even with LRF closing - state will have to pay to heat + light

- if LRF closes, 80 to 90 positions will be lost

Sub-Committee Actions

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 348

BILL TITLE: relative to criminal penalties and alternatives to incarceration.

DATE: March 12, 2009

Subcommittee Members: Reps. Charron, Welch, Stevens, Movsesian, Rodd and Chandley

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: 18-0 OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.) 18-0

Moved by Rep. Stanley E. Stevens

Seconded by Rep. Beth Rodd

Vote:

Respectfully submitted,

Rep. Gene P. Charron
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 348

BILL TITLE: relative to criminal penalties and alternatives to incarceration.

DATE: March 12, 2009

Subcommittee Members: Reps. Charron, Welch, Stevens, Movsesian, Rodd and Chandley

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Stanley E. Stevens

Seconded by Rep. Beth Rodd

Vote:

Respectfully submitted,

Rep. Gene P. Charron
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 348

BILL TITLE: relative to criminal penalties and alternatives to incarceration.

DATE: 3-12-09

Subcommittee Members: Reps. CHARRON, WELCH, STEVENS, MOVESIAN, RODD, CHANDLEY

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Stevens

Seconded by Rep. RODD

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk
Gene P. Charron,

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 348

BILL TITLE: relative to criminal penalties and alternatives to incarceration.

DATE: September 16, 2009

Subcommittee Members: Reps. Pantelakos, Movsesian, and Willette

Comments and Recommendations: ITL

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Movsesian

Seconded by Rep. Willette

Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Laura C. Pantelakos
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 348

BILL TITLE: relative to criminal penalties and alternatives to incarceration.

DATE: September 16, 2009

Subcommittee Members: Reps. Pantelakos, Rep Morsesian
Rep Willette

Comments and Recommendations: ITL

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Morsesian

Seconded by Rep. Willette

Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk
Laura C. Pantelakos

H.B. 348

Room 304 10:10

The Committee felt this bill was not necessary at this time

The part telling what the Supt of County jail should do is a 28A.

We felt that it was wrong to make the prosecuting Atty tell the job in writing. They already make recommendations.

The Lake Region facility issuse has already address.

The motion to ITL. by Rep Morrison 2nd Rep Willette

Vote 3-0

Testimony

HB 348

Hillsborough County Attorney
State of New Hampshire

300 Chestnut Street, Manchester, New Hampshire 03101
Telephone 603.627.5605
Fax 603.627.5627

MARGUERITE L. WAGELING
COUNTY ATTORNEY

MAUREEN F. O'NEIL
ROGER C. CHADWICK, JR.
FIRST ASSISTANTS

CATHERINE McNAUGHTON
DIRECTOR, VICTIM/WITNESS PROGRAM

February 19, 2008

Honorable Chairman Stephen Shurtleff
Members of the House Committee on Criminal Justice and Public Safety
107 North Main Street
Concord, New Hampshire 03301

RE: HB 348

Dear Chairman Shurtleff:

I write to express opposition to HB 348 on behalf of the New Hampshire Association of County Attorneys ("Association") and myself. I have also communicated with numerous chiefs of police in Hillsborough County who have all expressed strong disagreement with the language of this proposed legislation.

I have spoken to Representatives Kurk and Craig and applaud their efforts to reduce incarceration costs as well as lower the incidence of confinement of individuals with mental health and/or substance abuse/addiction issues. However, numerous Hillsborough County Chiefs of Police, the Association and I believe that their goals could be achieved through alternative means.

There are many statewide study groups, tasks forces and committees with broad membership currently exploring new approaches to sentencing and criminal justice that will surely bring a fresh focus to recidivism rates, punishment, rehabilitation, victims' rights and re-entry - The Interbranch Criminal and Juvenile Justice Council's Alternative Sentencing Task Force ("ICJJC Task Force") and Senate Bill 484 Commission to Study the Sentencing, Incarceration, and Recidivism of Criminal Offenders in Order to Enhance Public Safety and Improve the Criminal Justice Systems' Cost Effectiveness ("SB 484 Commission") to name a few. The SB 484 Commission is expected to issue a report shortly where it will provide findings and recommendations to address the very laudable goals of HB 348. In fact, the ICJJC Task Force's goal is to <u>implement</u> change to the criminal justice system, starting with a review of current programs throughout the state,

the SB 484 Commission's report and the New Hampshire Supreme Court's Citizens' Commission recommendations.

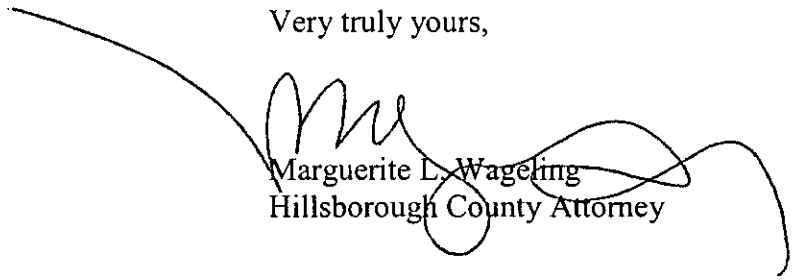
HB 348 will require all prosecuting attorneys to file a written statement during the prosecution of certain crimes or the presiding judge will be foreclosed forever from sentencing the defendant to incarceration. All prosecutors are currently expected to substantiate their sentencing recommendations and regularly do so during oral argument at the time of sentencing. Forcing a prosecutor to file yet another document with the court will not lessen the rate of incarceration, but it will certainly increase the workload/costs of the already burdened the state's court system and prosecution staffs. HB 348 states that it will apply to cases "which do not involve the use or threat of force or violence." This language suggests application to many crimes to include crimes of sexual penetration against children under the age of 13 since they rarely involve expressed threats or acts of violence. If the prosecutor does not file the necessary document prior to sentencing, it appears that the only sanction that could be imposed by the court is a monetary one since all future orders of incarceration would be violative of HB 348, as the proposed legislation provides that the court "shall not sentence the defendant to incarceration." Therefore, should the court impose an alternative to incarceration such as probation or a suspended sentence, a violation of a probation term or a suspended sentence could not later result in incarceration.

HB 348 would also amend RSA 30-B and RSA 651 to afford exclusive, unfettered authority to the superintendent of a county correctional facility to release a person sentenced by the court to imprisonment in a county corrections facility. This change of joined power and oversight between the judicial branch and the superintendents to exclusive authority of a county employee is unjustified and myopic. Our current sentencing system works. It allows a transparency in sentencing honored by New Hampshire's citizens. The court imposes all sentences in an open and public courtroom, after hearing argument from the parties knowledgeable of the facts and circumstances surrounding the defendant, victim and crime committed. Before sentencing, the court takes the safety concerns of the victim into consideration, as well as the defendant's pending charges, prior and current criminal and personal history. HB 348 appears to throw this system to the side, leaving the superintendent alone to decide who will remain incarcerated or not, without any input from anyone.

I have communicated with all 9 county attorneys and numerous Hillsborough County Chiefs regarding this legislation. We unanimously oppose HB 348. In their objections, New Hampshire county attorneys raised concerns about truth in sentencing, the lack of an integrated plan for treatment of offenders once released, the prospect that budget constraints would fully dictate the movement of prisoners, lack of policy requiring notification of victims at the time of release, and separation of power issues.

Thank you for the opportunity to express opposition to HB 348. I ask that you consider the issues raised within this correspondence and my testimony offered before the Committee on Criminal Justice and Public Safety.

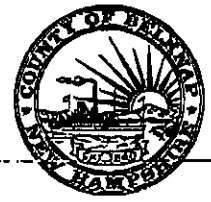
Very truly yours,



Marguerite L. Wageling
Hillsborough County Attorney

MLW/pjb

OFFICE OF BELKNAP COUNTY ATTORNEY



COUNTY COURTHOUSE
64 COURT STREET
LACONIA, NEW HAMPSHIRE 03246

603-527-5440
FAX 603-527-5449

ERIN M. BARNES
ASST. COUNTY ATTORNEY

CARLEY McWHIRK
ASST. COUNTY ATTORNEY

BARBARA E. BELMONT
VICTIM WITNESS COORDINATOR

JAMES M. CARROLL
BELKNAP COUNTY ATTORNEY

BRENDA LONZO
ADMINISTRATIVE ASSISTANT

February 18, 2009

Representative Neal Kurk
New Hampshire House of Representatives
Capitol Building
Concord, NH 03301

Re: Legislative Bill HBO 348/2009

Dear Representative Kurk:

As the County Attorney of Belknap, I would like to express my objection to the proposed legislation.

I assure you that Prosecutors, one and all, pay great heed to the determination of limiting a person's liberty in each and every case. It has been my experience that the various prosecutors in all the courts I have practiced in for over twenty years have necessarily been tasked to argue to the judge the reasons underlying the sentence being recommended, whether after trial or even during a negotiated plea with the defense.

Those arguments are well founded in the Court's demands of securing a punishment which has a balanced consideration of punishment, deterrence and rehabilitation.

The legislation requiring a sentencing memorandum to the court is imposing an additional burden on the prosecution, whose time is already stretched beyond reasonableness with the volume of the cases that we confront.

Further, it is, in my opinion, not constitutionally permissible or fundamentally prudent to authorize superintendents with the discretion to reconsider sentences, which has properly been the function of the judiciary.

Finally, legislating with an eye on the bottom line of a state or county budget ought not to be the process of a thoughtful legislature. The Courts are innately sensitive to the communities in which they sit. They have been appointed to administer justice. The administration, in order to be truly objective, needs to be driven by a clear aim to repair the community and the victim, as well as to directing an observation by the community that justice is served and not that the budget is the priority when the Court considers deterrence.

Prosecutors understand the state's and the county's fiscal difficulties. In the appropriate cases, prosecutors understand the value of alternative dispositional programs. However, the utilization and application of those programs come in a variety of contexts and should be left to the Court and prosecution to determine.

Thank you for your kind consideration in this matter. I sincerely appreciate that you conclude that the system presently in place is well designed.

Sincerely,

James M. Carroll
Belknap County Attorney

Marguerite Wageling

From: robert mekeel [mekeelaw@usa.net]
Sent: Wednesday, February 18, 2009 1:47 PM
To: mwageling@hcao.net
Subject: response from bob mekeel

marguerite,thank you for requesting my response to proposed legislation.i oppose HB 348 for several reasons:1. filing a report has never solved a real problem. it merely adds more paper to a process that is already public and on the record. prosecutors routinely justify their plea recommendations in open court. that should be sufficient for the small number of cases where members of the public question the wisdom of a plea recommendation.2. judges impose sentences following an advisarial proceeding. the decision to impose a particular sentence is within the province of the court. the role of the prosecutor is to do justice and protect the community. the judge's rationale for sentence is likewise public and on the record. 3. serving two year terms, county attorneys are accountable to the public for their actions. there is no necessity to establish a bureaucracy to oversee and, perhaps, micromanage sentencing recommendations.4. most sentencing recommendations are already discussed with those involved with the case. sentencing recommendations are routinely shared with victims and law enforcement by victim witness.coordinators. if change is necessary the legislature should amend sentencing statutes and provide more alternatives to incarceration.5. it is safe to rely upon criminal defense lawyers to do their jobs and advocate for appropriate sentences for their clients.6. we have a two lawyer office, the addition of more forms and paperwork will only prompt us to find ways to file generic reports so that we can spend our time on important matters.
with respect to the initiative to place post-sentencing decisions within the province of corrections, i anticipate nothing but problems. i would expect most decisions to be based upon economic considerations important to corrections. emphasis upon economic considerations is bound to make considerations of justice take a back seat.i hope that this is helpful.

i will be in concord tomorrow [if no great snow]. should you want me to testify, i will be interviewing a ASFA victim at the merrimack co. atty office from 10 to 12. my cell is [redacted] bob mekeel

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COUNTY ATTORNEY

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TO: **Honorable Chairman Stephen Shurtleff and Members of the House Committee on Criminal Justice and Public Safety**

FR: **Katherine Rogers, Merrimack County Attorney**

RE: **HB 348**

DATE: **February 17, 2009**

I write to you today with concerns about HB 348. While the intentions of the bill are admirable I am concerned that passage of this legislation could have some dangerous consequences.

This legislation's requirement that a prosecuting attorney submit to the court a written statement explaining why incarceration is necessary and why alternatives to incarceration would be unsuitable will add yet another demand on the already overburdened State's Prosecutors. The Office of the Merrimack County Attorney can easily justify why charges are being made against any particular defendant at Superior Court when an indictment is sought, however this requirement will add another level of paperwork for Prosecutors already handling a large caseload...

The language in HB 348 is not clear as to when the statement explaining the reason for seeking possible incarceration is to be produced for the court. If the written statement is to be required at arraignment at the District Court level I am concerned that in the municipalities where local Police departments handle the arraignments of Misdemeanors this requirement will be onerous for already busy Police officers. If this legislation is passed I would ask that

you more clearly determine when and where the statement justifying incarceration is produced.

My other concern with regards to HB 348 is its granting to the Superintendents of Corrections in any given county the authority to establish a day reporting program without authority granted by the sentencing Court.

Correctional Superintendents work at the dicretion of the County Commissioners and are not independent. A Day Reporting program could be demanded by the County Board of Commissioners as a method to reduce costs to the County at the correctional facility and pressure could be brought to bear on the Superintendent to exercise this authority against that Superintendent's best judgment.

Prosecutors consider many factors when arriving at a sentencing recommendation. In Merrimack County we use many alternatives to incarceration and are constantly looking for new methods of rehabilitating and punishing convicted defendants, however there are defendants who need to serve time incarcerated in order to fully pay their debt to society. Please do not forget this when looking for cost reducing measures.

Marguerite Wageling

From: Thomas P. Velardi [tvelardi@co.strafford.nh.us]

Sent: Wednesday, February 18, 2009 5:01 PM

To: Marguerite Wageling (E-mail)

Subject: Tomorrow's bill

I probably share the same concerns as many of us, including: needless paperwork to be filed by over-worked attorneys explaining why incarceration is necessary. We would have to file this document even on a mandatory minimum felon in possession charge, which makes no sense at all. The second part of the bill is more alarming as it clearly oversteps the line between the executive and judicial branches. Victims should know what the punishment is and have some confidence that punishment will be carried out. If a jailer is able to re-work the sentence, that confidence would be shattered. Also, this law would allow anyone to be placed immediately outside of the jail on supervision regardless of the negotiated plea or the judicial intent of the sentence. This usurpation of the court's broad common-law powers to fashion just sentences would surely be overturned by the Supreme Court on review. Best of luck tomorrow!

HB 348

onment or any fine in excess of the maximum provided for a class B misdemeanor in RSA 651:2, IV(a).

V. A violation is an offense so designated by statute within or outside this code and, except as provided in this paragraph, any offense defined outside of this code for which there is no other penalty provided other than a fine or fine and forfeiture or other civil penalty. In the case of a corporation or an unincorporated association, offenses defined outside of this code are violations if the amount of any such fine provided does not exceed $50.

V–a. The violation of any requirement created by statute or by municipal regulation enacted pursuant to an enabling statute, where the statute neither specifies the penalty or offense classification, shall be deemed a violation, and the penalties to be imposed by the court shall be those provided for a violation under RSA 651:2.

VI. Prior to or at the time of arraignment, the state may, in its discretion, charge any offense designated a misdemeanor, as defined by paragraph IV, as a violation. At such time, the prosecutor shall make an affirmative statement to the court as to whether he intends to proceed under this paragraph. In such cases the penalties to be imposed by the court shall be those provided for a violation under RSA 651:2. This paragraph shall not apply to any offense for which a statute prescribes an enhanced penalty for a subsequent conviction of the same offense.

VII. The state may change any offense designated or defined as a class A misdemeanor as defined by paragraph IV to a class B misdemeanor, so long as no element of the offense involves an act of violence or threat of violence. For purposes of this paragraph, the term "act of violence" means attempting to cause or purposely or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; and the term "threat of violence" means placing or attempting to place another in fear of imminent bodily injury either by physical menace or by threats to commit a crime against the person of the other. The state may change an offense pursuant to this paragraph if such change is in the interest of public safety and welfare and is not inconsistent with the societal goals of deterrence and prevention of recidivism, as follows:

(a) In its own discretion prior to or at the time of arraignment in the district court;

(b) In its own discretion following an entry of appeal in the superior court or within 20 days thereafter;

(c) With the agreement of the person charged at any other time; or

(d) In its own discretion, following entry of a complaint at a regional jury trial court or within 21 days thereafter.

VIII. If a person convicted of a class A misdemeanor has been sentenced and such sentence does not include any period of actual incarceration or a suspended or deferred jail sentence or any fine in excess of the maximum provided for a class B misdemeanor in RSA 651:2, IV(a), the court shall record such conviction and sentence as a class B misdemeanor.

History

Source. 1971, 518:1. 1973, 370:26-28. 1983, 382:7. 1988, 225:2. 1992, 269:1, 2. 1995, 277:21. 1996, 93:1. 2001, 274:5, eff. Jan. 1, 2002. 2006, 64:3, eff. Jan. 1, 2007.

Amendments—2006. Paragraph VIII: Deleted the second sentence.

—2001. Paragraph V-a: Inserted.

—1996. Paragraph VII: Amended generally.

—1995. Paragraph VII(d): Added.

—1992. Paragraph VI: Amended generally by ch. 269:1.

Paragraphs VII and VIII: Added by ch. 269:2.

—1988. Paragraph VI: Inserted the second sentence.

—1983. Paragraph VI: Added.

—1973. Paragraph III: Amended generally by ch. 370:26.

Paragraph IV: Chapter 370:27 substituted "by statute within or outside this code" for "in this code".

Paragraph V: Chapter 370:28 substituted "by statute within or outside this code" for "in this code" in the first sentence.

Applicability—1992 amendment. 1992, 269:21, eff. July 1, 1992, provided that the amendments to this section by 1992, 269:1, 2, shall apply to all offenses committed on or after July 1, 1992.

Library References

West Key Number

Criminal Law ⚷27.

Westlaw Topic

Westlaw Topic No. 110.

CJS

C.J.S. Criminal Law § 9.

AmJur

21 Am. Jur. 2d Criminal Law §§ 1, 19 to 29.

New Hampshire Practice

1 N.H.P. Criminal Practice and Procedure §§ 1.03, 3.07, 8.08, 13.05, 17.11 (4th ed.).

2 N.H.P. Criminal Practice and Procedure § 30.15 (4th ed.).

Annotations

Construction and application 1
Parking violations 2
Reduction of charges 3
Review 5
Sentence 4

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1. Construction and application

Defendant found guilty of simple assault violation could be required to pay restitution because defendant committed "criminal" act within meaning of statutes pertaining to restitution, even though violation was not crime according to different statute. State v. Woods (1994) 139 N.H. 399, 654 A.2d 960.

Provision of this section allowing prosecutor to reduce a misdemeanor charge to a violation only prior to or at the time of "arraignment" refers to either a district

From: Paul Larkham
N.E. Police Benevolent Assoc.
AFL-CIO

NHDOC Budget Questions

Commissioners Office:

The Commissioner's Office budget is made up of the following areas: Commissioner's office, Parole Board, HR, Victim Services, Training.

The major cost changes in this area are:

	2008 /2009	2010 / 2011
Comm. Office: Budget	$941,000/year	$1,800,000 /year 2010-2011
Employees increased:	10	18
HR: Budget	$690,000/year	$910,000/year
Employees increased:	11	12
Total increased $	**$2,000,000**	**3,300,000**
Employees increased	**27**	**36**

Budget increase to Commissioners Office: 65% in 4 years

Closure of Laconia Facility:

After closure of the facility, the NHDOC the LRF budget: **$1,300,000 / year.**

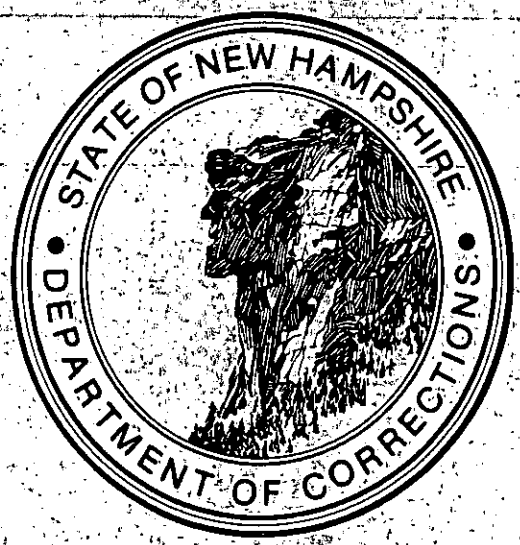
Question: Line item for "Contract for Program Services, $383,000".
Question: What programs are available in a closed facility?
Question: Why is there a budget for a closed facility?
Question: Why is there an increase in the commissioner office budget when staff are being laid off?
Question: Why are part-time administrators allowed to keep their job (in a full time position) plus collect state retirement when that position could be given to someone being laid off.

Question! Question! Question! Question! Question! Question! Question! Question!

HB 348

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS

ANNUAL REPORT FOR THE FISCAL YEAR ENDING JUNE 30, 2007



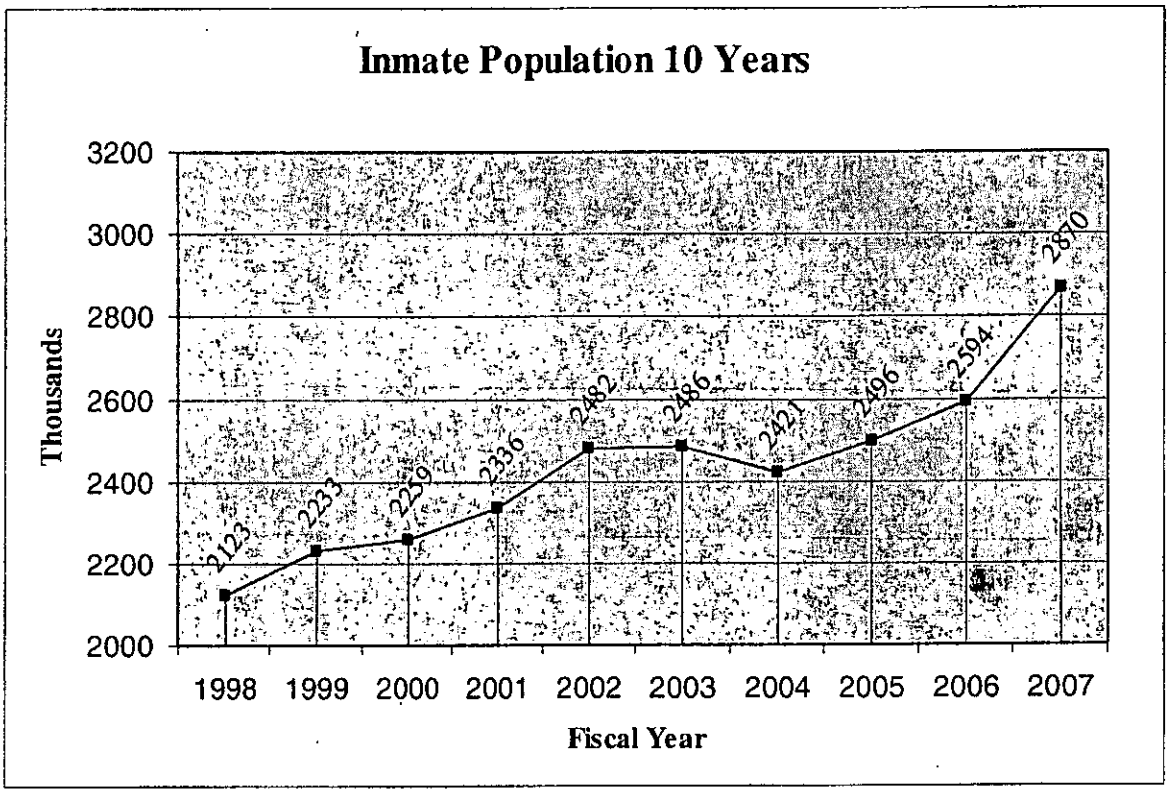
B. FY-07 OFFENDER POPULATION DATA

FY-07 Admissions by Crime

Description	Number Admitted FY2007	% of Total
VIOLATION OF PAROLE	543	34.5%
DRUGS-MFG, SALE, POSSESSION	133	8.5%
PROBATION VIOLATION	111	7.1%
SEX OFFENSES	87	5.5%
TRAFFIC OFFENSES	31	2.0%
AGGRAVATED ASSAULT	51	3.2%
BURGLARY	52	3.3%
ROBBERY	41	2.6%
HOMICIDE	12	0.8%
KIDNAPPING	4	0.3%
FORGERY AND COUNTERFEITING	16	1.0%
PROPERTY	21	1.3%
WEAPONS, CARRYING AND POSSESSION	17	1.1%
FRAUD	8	0.5%
ESCAPE, AIDING AND ABETTING ESCAPE	5	0.3%
ARSON	3	0.2%
THEFT	23	1.5%
VIOLENT CRIMES	108	6.9%
OTHER	290	18.4%
SPU	16	1.0%
	1572	100.0%

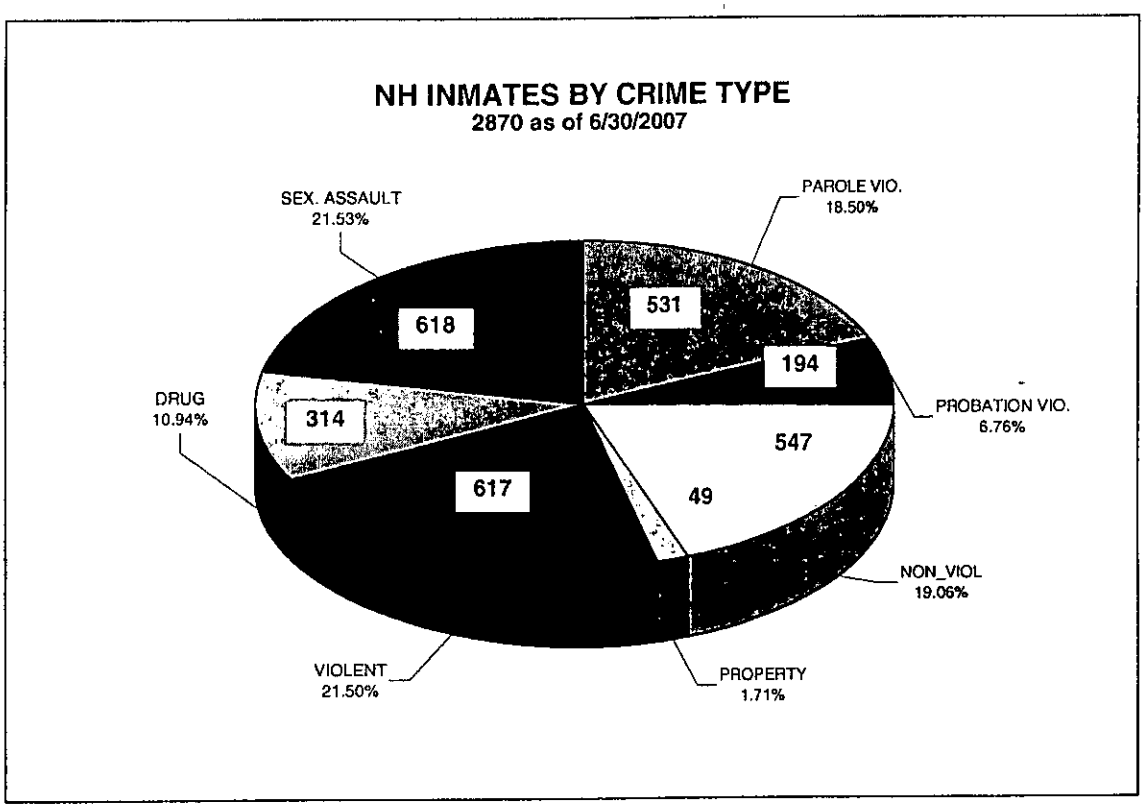
Total Incarcerated Population – June 30, 2007

In Fiscal Year 2007, the incarcerated inmate population increased by more than ten percent over FY-06 according to the chart below. The average increase prior to last year was approximately 2.5% except during FY-04.



Total Incarcerated Population by Crime Type

The crimes for which most prisoners are incarcerated in New Hampshire prisons are sexual assaults and crimes of violence, both at 21.5% of the population.



NH DEPARTMENT OF CORRECTIONS
CRIMES COMMITTED BY INCARCERATED NH INMATES

Description	Number Incarcerated 06/30/07	% of Total
SEX OFFENSES	618	21.5%
VIOLATION OF PAROLE	531	18.5%
MISC.	367	12.8%
DRUGS-MFG, SALE, POSSESSION	314	10.9%
HOMICIDE	233	8.1%
PROBATION VIOLATION	194	6.8%
AGGRAVATED ASSAULT	153	5.3%
BURGLARY	106	3.7%
ROBBERY	101	3.5%
STOLEN PROPERTY	49	1.7%
TRAFFIC OFFENSES	48	1.7%
WEAPONS, CARRYING AND POSSESSION	42	1.5%
LARCENY	30	1.0%
FORGERY AND COUNTERFEITING	24	0.8%
ESCAPE, AIDING AND ABETTING ESCAPE	17	0.6%
ARSON	15	0.5%
KIDNAPPING	14	0.5%
FRAUD	9	0.3%
OBSTRUCTING THE POLICE	2	0.1%
OBSTRUCTING PUBLIC PEACE	1	0.0%
FAMILY OFFENSE	1	0.0%
CONSERVATION	1	0.0%
	2870	100.0%

HB348

New England Police Benevolent Association
New Hampshire Department of Corrections Supervisor's Local 255

February 19, 2008

Dear Members of the Criminal Justice and Safety Committee,

I am Lieutenant Paul Cascio. I am an 18 year veteran of the NH Department of Corrections. I am the president of the New England Police Benevolent Association's Local 255, and I represent correction's uniformed supervisors. ~~I have served in a variety of capacities during my career with the department.~~

Today I would like to speak to you ~~regarding~~ OPPOSING House Bill 348. ~~One of the line items in this bill calls for the closing of the Lakes Region Facility. I have heard what has been represented to you from Commissioner Wrenn regarding the closing of this facility and I would like to point out several concerns you may want to take into account prior to sending HB 348 to the legislature.~~

The timetable in the bill calls for the closing of the Lakes Region Facility by January 1, 2010. What to do with 350 inmates currently housed at that facility has not been factored into this timetable. The Department of Corrections has no plan for the relocation or release of the 350 inmates currently housed at the Lakes Region Facility.

Although it is speculated that there are approximately 150 inmates who are illegal immigrants currently incarcerated and that the INS will return these inmates to their country of origin; these inmates are unidentified and it has not been determined how many have reached their minimum sentence or are eligible for release.

It has been ~~erroneously~~ reported to you that many inmates can be released on Administrative Home Confinement (AHC). However ~~it has not been reported to you that most, if not all~~, inmates currently eligible for minimum custody status have no home, no job and do not meet the requirements for release from prison, the conditions of AHC or parole. It has not been reported to you that with the closing of the Lakes Region Facility that these inmates will have no place to go in order to find a home or a job or make themselves eligible for release. The system is backed up. These inmates will continue to languish in prison that is overcrowded and is understaffed now and will become more dangerous with the closing of the Lakes Region Facility.

The commissioner of corrections has ~~touted~~ STATED to the press THAT the non-violent offenders who are currently being held in prison; such as the habitual offenders, mere traffic violators, burglars and the 350 minimum custody inmates being held at the Lakes Region Facility can be released. He has not said that the 350 minimum custody inmates currently incarcerated at the Lakes Region Facility are, in ~~fact~~ PARO, ~~rapists, child molesters and~~ violent criminals who have met our classification system's requirement for reduced custody, but have not met the requirements for re-entry into society, + DO NOT MEET THE REQUIREMENTS OF HB 348

Furthermore, we do not believe that you have erred in developing the laws that have made these, so-called, traffic violators, convicted felons. It is not one drunken driving offense that places these people in prison. It is, in fact, the repeated victimization of your constituents, and the complete disregard for the rights of ordinary citizens and the law of our state. These

THE NH POLICE CHIEFS ASSOCIATION APPLAUDS THIS EFFORT. BUT THEY ARE NOT HERE TODAY TO TELL YOU THEY WILL ORDER THEIR OFFICERS TO NOT ARREST HABITUAL OFFENDERS.

people are in prison because they are a ~~dangerous threat~~ DANGER to the general public that, we in corrections and you as law makers, are sworn to protect. But now, because of a budget crisis we are going to let bygones be bygones and allow criminals back into a homeless and jobless society.

These inmates will be competing with our own law enforcement employees who are to be laid off with the closing of the Lakes Region Facility. State employees, "forgotten cops", who have dedicated their life to dealing with the worst society has to offer and who will most likely lose their homes, collect unemployment and not be able to provide for their children and family.

The latest plan is to move 100 plus inmates to the gymnasium at the North Country Facility in Berlin. Several months ago I and my associates met with the governor because of the continual erosion of security staffing at our facilities. In fact, at the Lakes Region Facility, staffing was reduced so much that inmates were running through the woods, uninhibited, to pick up contraband from the nearby Meredith Center Road. This public thru-way had been previously patrolled by correctional staff to prevent such contact and contraband from entering the facility. Correctional officers were also told that it was now "ok" to leave units housing APPROX 100 inmates unattended, while they did security rounds in another area. This resulted in 10 inmates breaking into a security office and causing damage to that area. The inmates were removed and brought to the more secure Concord facility. But they were "minimum custody" inmates.

~~When we complained to the commissioner about the short-staffing there, the administration's answer was to allow smoking on grounds; thereby~~ THIS prompt~~ing~~S our plea to the governor and a Laconia newspaper. Staffing was slightly increased to prevent such transgressions from occurring but staffing would not have been increased without the public awareness effort on our part.

Staffing at the New Hampshire Department of Corrections has been an on-going issue for the past 15 years. Repeated attempts to get the department to provide a safe security staffing level has fallen on deaf ears. With each new financial challenge comes a continual erosion of effective security and rehabilitation programs that once served to effectively change inmate's behavior. Today these inmates will be released into the community without any programming. And community-based programs are declining.

The Lakes Region Facility, once a national model of effective correction's rehabilitation has eroded into a warehouse. Our commissioner has dubbed it a pre-release facility while continuing to cut security and program staff. One of the best and last programs, the Family Connections Center, will ultimately be a shell of its former self and no longer provide inmates with the parenting skills needed to stop the continual progression of incarceration within THE inmate's own family; which is truly a need in order to prevent crime in our state. If you don't believe me, please ask the employees of the Division of Children, Youth and Family Services.

In closing, I would like to add that we do not disagree with a restructuring of the NH Department of Corrections. I~~'m not even sure we disagree with the eventual closing of the Lakes Region Facility~~. We encourage the planning and development of a modern efficient correctional system. We encourage an overhaul of our inmate classification system (by the way that has been

under revision, with no changes established, since 2005). We encourage a restructuring of the rules of parole and the expansion of Administrative Home Confinement. We encourage a revision of the truth-in-sentencing law. ~~We even agree with the governor when he said to us that he does not want to continue to put $20 million dollars every 2 years into corrections, when the recidivism rate is constant at 400 parole violators a year.~~

We encourage a correctional system that takes the burden of incarceration off of ~~our society~~ and puts the cost and burden onto to those that take from our society. But to think that this goal would be achieved by ~~closing the Lakes Region Facility~~, overcrowding already overcrowded prisons, releasing dangerous criminals into society, laying off correctional staff, and sacrificing security practices without effective programs is naïve and is not solving the problem or saving cost; but creating a bigger one through ambivalence and ignorance.

We, correction's professionals know, that if you ignore crime and incarceration it will not go away. Crimes will just be easier to commit, we will desensitize our citizens and hurt our quality of life here in New Hampshire.

We hope for a collaborative effort in order to bring about an effective correctional system based on incarceration that provides a deterrence, incapacitation, retribution and rehabilitation for crimes committed against ordinary persons. We encourage a ~~task force to study and~~ make effective and lasting changes in our state correctional system.

But if you will not consider this, I encourage you to invite a state sentenced inmate into *your* neighborhood, ~~into *your* social circle and into *your* home. By all means, provide them~~ food, clothing, shelter, medical attention, ~~if needed~~ and protection, if required; ~~because~~ if you agree with ~~the current~~ plan before you for consideration…you will.

Tim Moquin HB 348

Date: February 17, 2009

To: The NH Legislators and House of Representatives

As a citizen of NH for my 45 years and a Corrections Professional for 18 years, allow me to provide my personal insight of why the Lakes Region Facility (LRF) and Transitional Housing is a vital part of the corrections system.

First I would like to give a brief history of how and why LRF was created. In 1990, Corrections Commissioner Ron Powell began the journey of alternative sentencing due to the increase of crimes resulting in prison overcrowding which created many lawsuits that the State of NH lost. Instead of multi-million dollar fines the state had agreed too many court mandates. Some of these mandates were compiled and named the Laaman Decree. This decree has been overseen by Atty. Alan Linder from the office of NH Legal Assistance. The decree was ordered because the rights of inmates were being violated mostly due to overcrowding and lack of required programs and care. These violations included lack of access to legal materials and courts, vocational and educational programs, medical care, and mental health care.

In 1991, Commissioner Powell opened LRF and implemented a boot camp program, called Shock Incarceration, for first time non-violent offenders, keeping most young offenders out of prison. Commissioner Powell continued to think outside of the box to combat the overcrowding issues and the recidivism rate of inmates re-offending, creating a drug and alcohol program named the Summit House. The Summit House was directed by Mr. Steve Kenny M-LADC, who managed it to be recognized as one of the best drug and alcohol programs in the country. Although Commissioner Powell left the Department of Corrections (DOC) his vision continued and was adopted by many of the middle managers, whom were promoted to many of the Wardens that are still in office today. Many other programs were adopted over the last 17 years for two reasons; One being to enforce the state oath taken by all correctional staff stating we would abide to the laws of NH and ensure public safety, the safety of staff and inmates, and to provide a safe, secure, and humane correctional system through effective supervision and appropriate treatment of offenders, and a continuum of services that promote successful re-entry into society for the safety of our citizens and in support of crime victims.

Unfortunately, with the proposed closing of LRF by Governor Lynch, the result will be the opposite of the mission statement that this same governor has adopted. Public safety will be jeopardized due to an increase of offenders being released without the proper housing, employment, programming, and life skills needed to become successful members of society. Instead, offenders will re-offend committing more crimes increasing the prison population.

Transferring inmates to the Northern Correctional Facility or the NH State Prison for Men in Concord without additional staffing, to be supervised in a gym and on pods without being able to lock down

inmates in 2 to 8 man cells, creates a safety liability for staff and inmates. Inmates will assault each other, or staff, and riot because of their inappropriate housing conditions that will result in an increase of cost because of lawsuits. If you don't believe this is reality, please note that the State of California was just court ordered to release up to 40% of their inmates or build more prisons. These lawsuits have cost the citizens of California millions of dollars. This same scenario will be happening to the citizens of NH.

Another area that the Governor mentioned in his budget address was releasing more offenders on the Administrative Home Confinement (AHC) bracelet program. Please let me inform you that there has been an average list of 240 to 270 offenders in the last 5 years waiting to live at one of only two halfway houses for the entire department. The halfway houses serve one purpose; to house inmates so they are able to go out in the community to find a job and save money to afford a place to live. Inmates can either apply for AHC, parole, or max out their sentence. AHC requires a place of residency, employment, monthly cost of AHC, and intense supervision. Paroling out does not have the additional monthly cost incurred from the AHC program or the intense supervision. Inmates who max out are unable to correct their behavior or refuse required programming and life skills making them ineligible to apply for AHC or Parole out and will usually re-offend. Majority of all inmates' parole out instead of AHC because they do not want the additional cost and the intense supervision or utilize the halfway house because they don't have a place to live. If this was not the case DOC would not have 270 offenders waiting for a halfway house, if they had a place to live the governor stated he would pick up the tab for the AHC cost and allow them to look for a job.

Who would you hire in this economy of 3.6 million people who have been laid-off in this country, a hard working, honest law abiding citizen or an offender who was just released from prison? And so the prison population increases again during bad economic times.

So without the additional LRF housing units and the available office and classroom space for the continuum of services that promotes successful re-entry into society for the safety of our citizens, what options are left? The Governor suggested out-sourcing. Out-sourcing is another term for transferring inmates out of state to other correctional facilities. I believe our last Governor, Governor Benson, looked into this same idea. Unfortunately, he and the legislators of NH realized it would cost the citizens more money to house them out of state. Just like the NH State Prison for Women being overcrowded and housing them in Strafford County House of Corrections for a cost of more than one million dollars per year for 37 offenders causing the Governor and Legislators to realize the state needs to build a new women's prison.

This same type of vision was discussed approximately two years ago when the legislators and Governor approved a house bill for the study of a master plan for the Department of Corrections that cost the taxpayers $472,000. The study was conducted and completed in the summer of 2007 by a group of private consultants whom submitted a few different plans. All plans were revolved around the Lakes Region Facility based on resources of capital costs, inmate management, and location of physical plants within the DOC. To my knowledge none of these plans were mentioned or submitted to educate the citizens of NH on the future of Corrections and future cost savings for NH. Failing to move on these plans

will only increase the cost of the required thought out plans due to a very bad economy resulting in prison overcrowding from increased crimes from millions of people being laid off.

Governor Lynch and Neil Kurk state they are worried about the quality of life if a casino comes to NH. Instead they want to close the Lakes Region Facility prison and push out inmates on the streets early, without jobs, which will increase the crime rate in NH. Closing the prison will also result in about 90 to 100 layoffs. What does the Governor mean when he states he's worried about the quality of life? Putting those hard working, honest law abiding NH citizens out on the streets fighting with criminals for a job, losing homes, living on welfare, and paying for unemployment in a crime ridden state.

I heard the Governor was informed NH could profit $500 million by one of the Casino Corporations to bring in a casino to NH that would put the state in the black and create jobs?

So, Governor Lynch, my suggestion for resolve in balancing the state budget and keeping the State of NH safe is to vote for a casino in NH and ask all NH State employees to take one day a month off, unpaid. I have also decided to personally retire on June 01, 2009 to save someone from being laid off.

Sincerely,

A very concerned citizen of NH,

Tim Moquin

118 Sterling Drive
Franklin,NH 03235
603-934-3306
thscmoquin@gmail.com

Rep. Kurk, Hills. 7
January 27, 2009
2009-0048h
04/09

HB 348

Draft Amendment to HB 348

1 Amend RSA 625:9, IX as inserted by section 1 of the bill by replacing it with the following:
2
3 IX. In all misdemeanor or felony cases for which incarceration is a possible penalty but
4 which do not involve an act of violence or the threat of violence, the prosecuting attorney may submit
5 a written statement to the court explaining why incarceration is necessary and why alternatives to
6 incarceration would be unsuitable. If the prosecuting attorney does not submit such a statement, the
7 court shall not sentence the defendant to incarceration. In this paragraph, "act of violence" or
8 "threat of violence" shall have the same meaning as in paragraph VII of this section.

2009-0048h

AMENDED ANALYSIS

This bill:

I. Requires the prosecuting attorney, in all misdemeanor or felony cases for which incarceration is a possible penalty but which do not involve an act of violence or the threat of violence, to submit to the court a written statement explaining why incarceration is necessary and why alternatives to incarceration would be unsuitable.

II. Authorizes the sentencing court or the superintendent of a county correctional facility to order the release of a person sentenced to incarceration for the purpose of participating in a day reporting or work release program or for home confinement.

III. Orders the commissioner of the department of corrections to close the Lakes Region facility in Laconia.

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 348

BILL TITLE: **relative to criminal penalties and alternatives to incarceration.**

DATE: March 17, 2009

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) **(RETAINED)**

Moved by Rep. Gene P. Charron

Seconded by Rep. Laura C. Pantelakos

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 348

BILL TITLE: **relative to criminal penalties and alternatives to incarceration.**

DATE: 3-17-09

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) Retain

Moved by Rep. Charron

Seconded by Rep. Pantelakos

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

OFFICE OF THE HOUSE CLERK

2009 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 348 Title: Relative to criminal penalties and alternatives to incarceration.

PH Date: 02/19/09 Exec Session Date: 3/17/09

Motion: Retain Amendment #:

MEMBER	YEAS	NAYS
Shurtleff, Stephen J, Chairman	✓	
Pantelakos, Laura C, V Chairman	✓	
Berube, Roger R	✓	
Robertson, Timothy N	✓	
Movsesian, Lori A	✓	
Burridge, Delmar D	✓	
Cushing, Robert R		
Rodd, Beth		
Chandley, Shannon E	✓	
McCarthy, Barbara A	✓	
Ryder, Mark R	✓	
Welch, David A	✓	
Charron, Gene P	✓	
Fesh, Robert M	✓	
Weare, Everett A	✓	
Stevens, Stanley E, Clerk	✓	
Villeneuve, Moe	✓	
Gagne, Larry G	✓	
Swinford, Elaine B	✓	
Willette, Robert F	✓	
TOTAL VOTE:	18	0

Printed: 1/12/2009

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 348

BILL TITLE: **relative to criminal penalties and alternatives to incarceration.**

DATE: November 5, 2009

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Pantelakos

Seconded by Rep. Fesh

Vote: 15-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 15-0 - YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 348

BILL TITLE: **relative to criminal penalties and alternatives to incarceration.**

DATE: November 5, 2009

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Pantelakos

Seconded by Rep. Fresh

Vote: 15-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Yes

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

OFFICE OF THE HOUSE CLERK 2009 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB348 Title:

PH Date: / / Exec Session Date: 11 / 05 / 09

Motion: ITL Amendment #:

MEMBER	YEAS	NAYS
Shurtleff, Stephen J, Chairman	✓	
Pantelakos, Laura C, V Chairman	✓	
Berube, Roger R	✓	
Robertson, Timothy N		
Movsesian, Lori A	✓	
Burridge, Delmar D		
Cushing, Robert R		
Rodd, Beth	✓	
Chandley, Shannon E	✓	
McCarthy, Barbara A		
Ryder, Mark R		
Welch, David A	✓	
Charron, Gene P	✓	
Fesh, Robert M	✓	
Weare, Everett A	✓	
Stevens, Stanley E, Clerk	✓	
Villeneuve, Moe	✓	
Gagne, Larry G	✓	
Swinford, Elaine B	✓	
Willette, Robert F	✓	
TOTAL VOTE:	15	0

Printed: 1/12/2009

Committee Report

CONSENT CALENDAR

November 9, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB348,

AN ACT relative to criminal penalties and alternatives to incarceration. Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Laura C Pantelakos

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number:	**HB348**
Title:	**relative to criminal penalties and alternatives to incarceration.**
Date:	**November 9, 2009**
Consent Calendar:	**YES**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The section of this bill pertaining to the closing of the Lakes Region Facility has already been addressed. The remainder of the bill, relating to alternative sentencing, is being studied by the Department of Corrections. The committee feels this bill is not needed at this time.

Vote 15-0.

Rep. Laura C Pantelakos
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB348, relative to criminal penalties and alternatives to incarceration. **INEXPEDIENT TO LEGISLATE.**

Rep. Laura C Pantelakos for CRIMINAL JUSTICE AND PUBLIC SAFETY. The section of this bill pertaining to the closing of the Lakes Region Facility has already been addressed. The remainder of the bill, relating to alternative sentencing, is being studied by the Department of Corrections. The committee feels this bill is not needed at this time. **Vote 15-0.**

Original: House Clerk
Cc: Committee Bill File

HB 348

ITL

The section of this bill pertaining to the closing of the Lakes Region Facility has already been addressed. The remainder of the bill, relating to alternative sentencing, is being by the Department of Corrections. The committee feels this bill is not needed at this time.

Laura Pantelakos

COMMITTEE REPORT

COMMITTEE: Criminal Justice and Public Safety

BILL NUMBER: 348

TITLE:

DATE: CONSENT CALENDAR: YES ☒ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☑ INEXPEDIENT TO LEGISLATE

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

Parts of this bill have already been addressed, such as the closing of the Lake Region Facility. The Correction Dept is now working on a new system for Alternative Sentencing.

The Committee felt this bill is not needed at this time.

COMMITTEE VOTE: 15-0

RESPECTFULLY SUBMITTED,

Rep. Laura Pantelakos
For the Committee

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rev. 02/01/07 - Yellow