

House Child and Family Law Committee

Information Regarding HB 254 – Relative to the Placement of Minors in Secure Settings

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Proposed Change to RSA 169-B

Commitment under this subparagraph shall not be ordered as a disposition for [a violation of RSA 262 or 637, possession of a controlled drug without intent to sell under RSA 318-B, or violations of RSA 634, 635, 641, or 644, which would be a misdemeanor if committed by an adult] **any offense other than:**

- *first degree murder,*
- *second degree murder,*
- *attempted murder,*
- *manslaughter,*
- *negligent homicide under RSA 630:3, II,*
- *first degree assault, second degree assault, except when the allegation is a violation of RSA 631:2, I(d) (see below),*
- *felonious sexual assault, aggravated felonious sexual assault,*
- *kidnapping, criminal restraint,*
- *robbery punishable as a class A felony,*
- *burglary while armed or involving the infliction of bodily harm under RSA 635:1, II, or*
- *arson punishable as a felony.*

Partial List of Felony Level Offenses Where Commitment
Would be Prohibited Pursuant to Proposed Change in HB 245

1. 159:10 Sale of Firearms without a License, Felony B (III)¹

Any person who, without being licensed as herein provided, sells, advertises or exposes for sale, or has in his possession with intent to sell, pistols or revolvers shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.

¹ Indicates the level of the offense on the Court's JDAI. Level I is the highest risk.

2. 159:11 Providing False Information in Purchase of Firearm, Misd/Felony (III)

Any person who, in purchasing or otherwise securing delivery of a pistol, revolver, or other firearm, gives false information or offers false evidence of his identity, shall be guilty of a misdemeanor for the first offense, and be guilty of a class B felony for any subsequent offense.

3. 159:19 Possession of Dangerous Weapon in Courtroom/Courtroom Area, Felony B (III)

No person shall knowingly carry a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, whether open or concealed or whether licensed or unlicensed, upon the person or within any of the person's possessions owned or within the person's control in a courtroom or area used by a court. Whoever violates the provisions of this paragraph shall be guilty of a class B felony.

4. 318-B:2/318-B:26, Sale of any Schedule I- IV drugs, Felony (III)

It shall be unlawful for any person to manufacture, possess, have under his control, sell, purchase, prescribe, administer, or transport or possess with intent to sell, dispense, or compound any controlled drug, or controlled drug analog, or any preparation containing a controlled drug, except as authorized in this chapter....

See <http://www.gencourt.state.nh.us/rsa/html/XXX/318-B/318-B-26.htm>

5. 318-B:26(VI), Drug Enterprise Leader Felony, (IV)

VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318-B:2, XII as a drug enterprise leader shall be sentenced to a mandatory minimum term of not less than 25 years and may be sentenced to a maximum term of not more than life imprisonment. The court may also impose a fine not to exceed \$500,000 or 5 times the street value of the controlled drug or controlled drug analog involved, whichever is greater. Upon conviction, the court shall impose the mandatory sentence unless the defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the defendant and the state have entered into a post-conviction agreement which provides for a lesser sentence. The negotiated plea or post-conviction agreement may provide for a specified term of imprisonment within the range of ordinary or extended sentences authorized by law, a specified fine, or other disposition. In that event, the court at sentencing shall not impose a lesser term of imprisonment or fine than that expressly provided for under the terms of the plea or post-conviction agreement.

6. 630:4, Causing or Aiding Suicide, Misd/Felony, (III)

I. A person is guilty of causing or aiding suicide if he purposely aids or solicits another to commit suicide.
II. Causing or aiding suicide is a class B felony if the actor's conduct causes such suicide or an attempted suicide. Otherwise it is a misdemeanor.

7. 631:2 Second Degree Assault

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

(d) Purposely or knowingly causes bodily injury to a child under 13 years of age

8. 631:2-a Simple Assault

I. A person is guilty of simple assault if he:

- (a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or
- (b) Recklessly causes bodily injury to another; or
- (c) Negligently causes bodily injury to another by means of a deadly weapon.

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

9. 631:2-b, Domestic Violence, Felony B (III)

I. A person is guilty of domestic violence if the person commits any of the following against a family or household member or intimate partner:

- (a) Purposely or knowingly causes bodily injury or unprivileged physical contact against another by use of physical force;
- (b) Recklessly causes bodily injury to another by use of physical force;
- (c) Negligently causes bodily injury to another by means of a deadly weapon;
- (d) Uses or attempts to use physical force, or by physical conduct threatens to use a deadly weapon for the purpose of placing another in fear of imminent bodily injury;
- (e) Threatens to use a deadly weapon against another person for the purpose to terrorize that person;
- (f) Coerces or forces another to submit to sexual contact by using physical force or physical violence;
- (g) Threatens to use physical force or physical violence to cause another to submit to sexual contact and the victim believes the actor has the present ability to execute the threat;
- (h) Threatens to use a deadly weapon to cause another to submit to sexual contact and the victim believes the actor has the present ability to carry out the threat;
- (i) Confines another unlawfully, as defined in RSA 633:2, by means of physical force or the threatened use of a deadly weapon, so as to interfere substantially with his or her physical movement;
- (j) Knowingly violates a term of a protective order issued pursuant to RSA 173-B:4, I by means of the use or attempted use of physical force or the threatened use of a deadly weapon;
- (k) Uses physical force or the threatened use of a deadly weapon against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
 - (1) The report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
 - (2) A request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

II. Domestic violence is a class A misdemeanor unless the person uses or threatens to use a deadly weapon as defined in RSA 625:11, V, in the commission of an offense, in which case it is a class B felony.

III. For purposes of this section:

- (a) "Family or household member" means:
 - (1) The actor's spouse or former spouse;
 - (2) A person with whom the actor is cohabiting as a spouse, parent, or guardian;
 - (3) A person with whom the actor cohabited as a spouse, parent, or guardian but no longer shares the same residence;
 - (4) An adult with whom the actor is related by blood or marriage; or
 - (5) A person with whom the actor shares a child in common.
- (b) "Intimate partner" means a person with whom the actor is currently or was formerly involved in a

romantic relationship, regardless of whether or not the relationship was sexually consummated.

IV. Upon conviction and sentencing, the court shall document on the sentencing form the specific nature of the relationship between the defendant and the victim, by reference to subparagraphs III(a)(1)-(5) and III(b).

V. In addition to any other penalty authorized by law, the court shall levy a fine of \$50 for each conviction under this section. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this section. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. Fines imposed under this section shall not be subject to an additional penalty assessment and shall not be subject to the provisions of RSA 618:8 or 618:9. The clerk shall forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173-B:15.

10. 631:3, Reckless Conduct, Felony (III)

I. A person is guilty of reckless conduct if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.

II. Reckless conduct is a class B felony if the person uses a deadly weapon as defined in RSA 625:11, V. All other reckless conduct is a misdemeanor.

11. 631:4, Criminal Threatening, Felony B, (III)

I. A person is guilty of criminal threatening when:

(a) By physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or

(b) The person places any object or graffiti on the property of another with a purpose to coerce or terrorize any person; or

(c) The person threatens to commit any crime against the property of another with a purpose to coerce or terrorize any person; or

(d) The person threatens to commit any crime against the person of another with a purpose to terrorize any person; or

(e) The person threatens to commit any crime of violence, or threatens the delivery or use of a biological or chemical substance, with a purpose to cause evacuation of a building, place of assembly, facility of public transportation or otherwise to cause serious public inconvenience, or in reckless disregard of causing such fear, terror or inconvenience; or

(f) The person delivers, threatens to deliver, or causes the delivery of any substance the actor knows could be perceived as a biological or chemical substance, to another person with the purpose of causing fear or terror, or in reckless disregard of causing such fear or terror.

II. (a) Criminal threatening is a class B felony if the person:

(1) Violates the provisions of subparagraph I(e); or

(2) Uses a deadly weapon as defined in RSA 625:11, V in the violation of the provisions of subparagraph I(a), I(b), I(c), or I(d).

(b) All other criminal threatening is a misdemeanor.

12. "633:7", Trafficking in Persons, Felony A IV

It is a class A felony to knowingly compel a person against his or her will to perform a service or labor, including a commercial sex act or a sexually-explicit performance, for the benefit of another, where the compulsion is accomplished by any of the following means:...

13. 635:1 Burglary (not including armed or with bodily injury)

I. A person is guilty of burglary if he or she enters or remains unlawfully in a building or occupied structure, or separately secured or occupied section thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

II. Burglary is a class B felony unless it is perpetrated in the dwelling of another at night, or if, in the commission of the offense, attempt at commission or in flight immediately after attempt or commission, the actor is armed with a deadly weapon or explosives or he purposely, knowingly or recklessly inflicts bodily injury on anyone; in which case it is a class A felony; except that if the person is armed with a deadly weapon and the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

14. 639:3 Endangering the Welfare of a Child, Misd/Felony (II)

I. A person is guilty of endangering the welfare of a child or incompetent if he knowingly endangers the welfare of a child under 18 years of age or of an incompetent person by purposely violating a duty of care, protection or support he owes to such child or incompetent, or by inducing such child or incompetent to engage in conduct that endangers his health or safety.

II. In the prosecution of any person under this section, the tattooing or branding by any person of a child under the age of 18 constitutes endangering the welfare of such child.

II-a. In the prosecution of any person under this section, the placement of a child for adoption or the attempt to place a child for adoption in violation of RSA 170-B:33 constitutes endangering the welfare of such child.

III. In the prosecution of any person under this section, the solicitation by any person of a child under the age of 16 to engage in sexual activity as defined by RSA 649-A:2, III for the purpose of creating a visual representation as defined in RSA 649-A:2, IV, or to engage in sexual penetration as defined by RSA 632-A:1, V, constitutes endangering the welfare of such child.

15. 641:5 Tampering with a Witness, Felony (III)

A person is guilty of a class B felony if:

I. Believing that an official proceeding, as defined in RSA 641:1, II, or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:

- (a) Testify or inform falsely; or
- (b) Withhold any testimony, information, document or thing; or
- (c) Elude legal process summoning him to provide evidence; or
- (d) Absent himself from any proceeding or investigation to which he has been summoned; or

II. He commits any unlawful act in retaliation for anything done by another in his capacity as witness or informant; or

III. He solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in paragraph I.

16. 642:2, Resisting Arrest/Detention, Felony (III)

A person is guilty of a misdemeanor when the person knowingly or purposely physically interferes with a person recognized to be a law enforcement official, including a probation or parole officer, seeking to effect an arrest or detention of the person or another regardless of whether there is a legal basis for the arrest. A person is guilty of a class B felony if the act of resisting arrest or detention causes serious bodily injury, as defined in RSA 625:11, VI, to another person. Verbal protestations alone shall not constitute resisting arrest or detention.

17. 642:3, Hindering Apprehension – ALL, Felony/Misd, (II)

I. A person is guilty of an offense if, with a purpose to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he:

- (a) Harbors or conceals the other; or
- (b) Provides such person a weapon, transportation, disguise or other means for avoiding discovery or apprehension; or
- (c) Warns such person of impending discovery or apprehension; or
- (d) Conceals, destroys or alters any physical evidence that might aid in the discovery, apprehension or conviction of such person; or
- (e) Obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or
- (f) Having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under RSA 570-A to intercept a telecommunication or oral communication, or under RSA 570-B to install and use a pen register or trap and trace device, gives notice of the possible interception or installation and use to any person.

II. The offense is a misdemeanor unless the actor knows that the charge made or liable to be made against the other is murder or a class A felony, in which case it is a class B felony.

18. 642:3-a, Taking Firearm from Law Enforcement Officer, Felony A (IV)

19. 642:3-a, Taking Firearm from Law Enforcement Officer, Felony B (III)

I. Whoever knowingly takes a firearm:

- (a) From the person of a law enforcement officer, while such officer is engaged in the performance of official duties; and
- (b) Against that officer's will; or attempts to do so, shall be punished as provided in paragraph II.

II. The punishment for an offense under this section is:

- (a) In the case of an offense other than an attempt, or an offense that is an attempt during which the firearm is discharged (other than intentionally by the officer), a class A felony; and
- (b) In the case of any other offense that is an attempt, a class B felony.

20. 642:6, Escape, Felony A IV & 642:6 Escape, Felony B (II)

I. A person is guilty of an offense if such person escapes from official custody.

II. "Official custody" means arrest, custody in a penal institution, an institution for confinement of juvenile offenders or other confinement pursuant to an order of a court.

III. The offense is a class A felony if the actor employs force against any person or threatens any person

with a deadly weapon to effect the escape, except that if the deadly weapon is a firearm, the actor shall be sentenced in accordance with RSA 651:2, II-g. The offense is a class B felony if the actor was on parole, subject to a bail order, was a prisoner at an adult or juvenile correction facility at the time, or had been released from any correctional institution pursuant to administrative home confinement or any treatment program or other place as directed by the correctional authority or sentencing court, or had a prior conviction of the crime of escape. If no physical force was used by the actor and no persons other than the actor sustained bodily injury as a result of the escape, the offense is a class A misdemeanor.

21. 644:1, Riot, Felony (III)

I. A person is guilty of riot if:

- (a) Simultaneously with 2 or more other persons, he engages in tumultuous or violent conduct and thereby purposely or recklessly creates a substantial risk of causing public alarm; or
- (b) He assembles with 2 or more other persons with the purpose of engaging soon thereafter in tumultuous or violent conduct, believing that 2 or more other persons in the assembly have the same purpose; or
- (c) He assembles with 2 or more other persons with the purpose of committing an offense against the person or property of another whom he supposes to be guilty of a violation of the law, believing that 2 or more other persons in the assembly have the same purpose.

22. 649-B:3, Computer Pornography Prohibited, Felony B (II)

I. No person shall knowingly:

- (a) Compile, enter into, or transmit by means of computer;
- (b) Make, print, publish, or reproduce by other computerized means;
- (c) Cause or allow to be entered into or transmitted by means of computer; or
- (d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

II. Any person who violates the provisions of this section is guilty of a class B felony.

23. 649-B:4, Certain Uses of Computer Services Prohibited, Felony II

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.

24. 650-A:1, Felonious use of Firearms, Felony (III)

A person is guilty of a class B felony if he commits or attempts to commit any felony when armed with a pistol, revolver, rifle, shotgun or any other firearm. For any subsequent offense, a person shall be guilty of a class A felony.