

HB 1580-FN – AS INTRODUCED

2014 SESSION

14-2112
04/10

HOUSE BILL ***1580-FN***
AN ACT repealing mandatory minimum sentences.
SPONSORS: Rep. Lambert, Hills 44; Rep. Itse, Rock 10
COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill eliminates mandatory minimum sentences.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT repealing mandatory minimum sentences.

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

1 1 Pistols and Revolvers; Armed Career Criminals. Amend RSA 159:3-a, II-III to read as follows:

2 II. Any person who violates paragraph I shall be guilty of a felony and, notwithstanding
3 RSA 651:2, II, shall be sentenced to a ~~[minimum mandatory term of 10 years imprisonment and a]~~
4 maximum term of imprisonment of not more than 40 years and shall be fined not more than \$25,000.

5 III. Notwithstanding any other provision of law, neither the whole, nor any part of the
6 ~~[minimum mandatory]~~ sentence provided under paragraph II shall be served concurrently with any
7 other term, nor shall the whole or any part of such additional term of imprisonment be suspended or
8 deferred. No action brought to enforce sentencing under this section shall be continued for
9 sentencing, nor shall the provisions of RSA 651:20 relative to suspensions or RSA 651-A relative to
10 parole apply to any sentence of imprisonment imposed.

11 2 Habitual Offenders; Penalty. Amend RSA 262:23, I-III to read as follows:

12 I. It shall be unlawful for any person to drive any motor vehicle on the ways of this state
13 while an order of the director or the court prohibiting such driving remains in effect. If any person
14 found to be an habitual offender under the provisions of this chapter is convicted of driving a motor
15 vehicle on the ways of this state while an order of the director or the court prohibiting such operation
16 is in effect, he or she shall be guilty of a felony and sentenced, notwithstanding the provisions of RSA
17 title LXII, to imprisonment for not ~~[less than one year nor]~~ more than 5 years. No ~~[portion of the]~~
18 ~~minimum mandatory sentence shall be suspended, and no~~ case brought to enforce this chapter shall
19 be continued for sentencing; provided, however, that any sentence or part thereof imposed pursuant
20 to this section may be suspended in cases in which the driving of a motor vehicle was necessitated by
21 situations of apparent extreme emergency which required such operation to save life or limb. Any
22 sentence of one year or less imposed pursuant to this paragraph shall be served in a county
23 correctional facility. The sentencing court may order that any such offender may serve his or her
24 sentence under home confinement pursuant to RSA 651:19 based on the rules and regulations of the
25 county correctional facility where the sentence is to be served ~~[for the minimum mandatory term or~~
26 ~~any portion thereof]~~, provided the offender first serves 14 consecutive days of imprisonment prior to
27 eligibility for home confinement. Habitual offenders shall only be eligible for the home confinement
28 program once per lifetime. Any sentence of more than one year imposed pursuant to this paragraph
29 shall be served in the state prison.

30 II. For the purpose of enforcing this section, in any case in which the accused is charged with
31 driving a motor vehicle while his license, permit or privilege to drive is suspended or revoked, or is

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1 charged with driving without a license, the court before hearing such charge shall determine
2 whether such person has been held an habitual offender and by reason of such holding is barred from
3 driving a motor vehicle on the ways of this state. For the purposes of this section, in determining
4 whether the person has been held an habitual offender and by reason of such holding is barred from
5 driving a motor vehicle on the ways of this state, a certified copy of the individual's motor vehicle
6 record on file with the division shall be as competent evidence in any court within this state as the
7 original record would be if produced by the director as legal custodian thereof.

8 III. ~~[Notwithstanding paragraph I, any person who qualifies under RSA 259:39 shall not be~~
9 ~~subject to the minimum mandatory provisions of paragraph I if, and only if, that person's~~
10 ~~certification was not based on any conviction under RSA 265-A:2, I or any misdemeanor or felony~~
11 ~~motor vehicle conviction pursuant to RSA title XXI, and that person has not been convicted of any~~
12 ~~such offense, or any reasonably similar offense in any jurisdiction within the United States and~~
13 ~~Canada, since the date of the certification; provided, however, that any such person shall be guilty of~~
14 ~~a class A misdemeanor and may be sentenced to one year or less.] Any person incarcerated upon the~~
15 effective date of this paragraph, pursuant to certification as an habitual offender under RSA 259:39,
16 who does not have a conviction under RSA 265-A:2, I involving a vehicle or any misdemeanor or
17 felony motor vehicle convictions pursuant to RSA title XXI, may apply immediately to the superior
18 court for sentence review and reduction.

19 3 License Suspension and Revocation; Driving After Revocation or Suspension. Amend
20 RSA 263:64, IV to read as follows:

21 IV. Any person who violates this section by driving or attempting to drive a motor vehicle or
22 by operating or attempting to operate an OHRV or snowmobile in this state during the period of
23 suspension or revocation of his or her license or driving privilege for a violation of RSA 265:79 or an
24 equivalent offense in another jurisdiction shall be guilty of a misdemeanor. Any person who violates
25 this section by driving or attempting to drive a motor vehicle or by operating or attempting to
26 operate an OHRV or snowmobile in this state during the period of suspension or revocation of his or
27 her license or driving privilege for a violation of RSA 265-A:2, I, RSA 265-A:3, RSA 630:3, II,
28 RSA 265:82, or RSA 265:82-a or an equivalent offense in another jurisdiction shall be guilty of a
29 misdemeanor and shall be sentenced to imprisonment for a period not ~~[less]~~ **more** than 7 consecutive
30 24-hour periods to be served within 6 months of the conviction, shall be fined not more than \$1,000,
31 and shall have his or her license or privilege revoked for an additional year. ~~[No portion of the~~
32 ~~minimum mandatory sentence of imprisonment shall be suspended by the court.] No case brought to~~
33 enforce this paragraph shall be continued for sentencing for longer than 35 days. ~~[No person serving~~
34 ~~the minimum mandatory sentence under this paragraph shall be discharged pursuant to authority~~
35 ~~granted under RSA 651:18, released pursuant to authority granted under RSA 651:19, or in any~~
36 ~~manner, except as provided in RSA 623:1, prevented from serving the full amount of such minimum~~
37 ~~mandatory sentence under any authority granted by title LXII or any other provision of law.]~~

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1 4 Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18, I(c)(3)
2 to read as follows:

3 (3) Sentenced to [~~a mandatory sentence of not less~~] **not more** than 35 consecutive days
4 in the county correctional facility, of which 21 shall be suspended. The court shall refer the person to
5 an IDCMP to schedule a full substance use disorder evaluation. A condition of the suspension shall
6 be that upon release from serving the 14 days in the county correctional facility, the person shall
7 schedule a substance use disorder evaluation within 30 days of release, complete the required
8 substance use disorder evaluation within 60 days of release, and comply with the service plan
9 developed. The IDCMP shall administer the substance use disorder evaluation and shall develop the
10 service plan from that substance use disorder evaluation. Any portion of the suspended sentence to
11 the county correctional facility may be imposed if the defendant does not comply with all of the
12 requirements of this subparagraph or becomes noncompliant with the service plan during the
13 suspension period;

14 5 Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18, IV(a)-
15 (b) to read as follows:

16 (a) For a second offense:

17 (1) The person shall be guilty of a class A misdemeanor;

18 (2) The person shall be fined not less than \$750;

19 (3)(A) If the complaint alleges that the prior conviction occurred within 2 years
20 preceding the date of the second offense, the person shall be sentenced to [~~a mandatory sentence of~~
21 ~~not less~~] **not more** than 60 consecutive days in the county correctional facility, of which 30 days shall
22 be suspended. The court shall refer the person to an IDCMP to schedule a full substance use
23 disorder evaluation. A condition of the suspension shall be that upon release from serving the 30
24 days in the county correctional facility, the person shall schedule a substance use disorder evaluation
25 within 30 days of release, complete the required substance use disorder evaluation within 60 days of
26 release, and comply with the service plan developed. The IDCMP shall administer the substance use
27 disorder evaluation and shall develop the service plan from that substance use disorder evaluation.
28 Any portion of the suspended sentence to the county correctional facility may be imposed if the
29 defendant does not comply with all of the requirements of this subparagraph or becomes
30 noncompliant with the service plan during the suspension period;

31 (B) If the complaint alleges that the prior conviction occurred more than 2 but
32 not more than 10 years preceding the date of the second offense, the person shall be sentenced to [~~a~~
33 ~~mandatory sentence of not less~~] **not more** than 17 consecutive days in the county correctional
34 facility, of which 12 days shall be suspended. The court shall refer the person to an IDCMP to
35 schedule a full substance use disorder evaluation. A condition of the suspension shall be that upon
36 release from serving the 5 days in the county correctional facility, the person shall schedule a
37 substance use disorder evaluation within 30 days of release, complete the required substance use

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1 disorder evaluation within 60 days of release, and comply with the service plan developed. The
2 IDCMP shall administer the substance use disorder evaluation and shall develop the service plan
3 from that substance use disorder evaluation. Any portion of the suspended sentence to the county
4 correctional facility may be imposed if the defendant does not comply with all of the requirements of
5 this subparagraph or becomes noncompliant with the service plan during the suspension period; and

6 (4) The person's driver's license or privilege to drive shall be revoked for not less
7 than 3 years. The person's driver's license or privilege to drive shall not be restored by the
8 department until the person shall have completed the service plan developed by the IDCMP, and
9 paid all relevant fees.

10 (b) For a third offense, any person convicted under this paragraph shall be subject to all
11 the penalties of subparagraph (a) except that:

12 (1) The person's driver's license or privilege to drive shall be revoked indefinitely and
13 shall not be restored for at least 5 years. At the end of the 5-year minimum revocation period the
14 person may petition the court for eligibility to reapply for a driver's license and the court, for good
15 cause shown, may grant such eligibility subject to such terms and conditions as the court may
16 prescribe. Any untimely petition under this subparagraph shall be dismissed without a hearing. If
17 such petition is granted and the person is otherwise eligible for license restoration, the person may
18 then apply to the director for restoration of driver's license, but the license shall not be restored until
19 all requirements under law are met. The person's driver's license or privilege to drive shall not be
20 restored by the department until the person shall have completed the service plan developed by the
21 IDCMP, and paid all relevant fees.

22 (2) The person shall be sentenced to [~~a mandatory sentence of not less~~] **not more**
23 than 180 consecutive days of which 150 shall be suspended. The court shall refer the person to an
24 IDCMP to schedule a full substance use disorder evaluation. A condition of the suspension shall be
25 that upon release from serving the 30 days in the county correctional facility, the person shall
26 schedule a substance use disorder evaluation within 30 days of release, complete the required
27 substance use disorder evaluation within 60 days of release, and comply with the service plan
28 developed. The IDCMP shall administer the substance use disorder evaluation and shall develop the
29 service plan from that substance use disorder evaluation. Any portion of the suspended sentence to
30 the county correctional facility may be imposed if the defendant does not comply with all of the
31 requirements of this subparagraph or becomes noncompliant with the service plan during the
32 suspension period. The remainder of the sentence may be deferred for a period of up to 2 years. The
33 court may, at the satisfactory completion of any required treatment, suspend any remaining deferred
34 sentence.

35 6 Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18, VII to
36 read as follows:

37 VII. [~~No portion of the minimum mandatory sentence of imprisonment and no portion of the~~

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1 ~~mandatory sentence of the period of revocation and no portion of any fine imposed under this section~~
2 ~~shall be suspended or reduced by the court.]~~ No case brought to enforce this section shall be
3 continued for sentencing for longer than 35 days. ~~[No person serving the minimum mandatory~~
4 ~~sentence under this section shall be discharged pursuant to authority granted under RSA 651:18,~~
5 ~~released pursuant to authority granted under RSA 651:19, or in any manner, except as provided in~~
6 ~~RSA 623:1, prevented from serving the full amount of such minimum mandatory sentence under any~~
7 ~~authority granted by RSA title LXII or any other provision of law.]~~

8 7 Controlled Drug Act; Penalties. Amend RSA 318-B:26, V-VI to read as follows:

9 V. Any person who violates this chapter by manufacturing, selling, prescribing,
10 administering, dispensing, or possessing with intent to sell, dispense, or compound any controlled
11 drug or its analog, in or on or within 1,000 feet of the real property comprising a public or private
12 elementary, secondary, or secondary vocational-technical school, may be sentenced to a term of
13 imprisonment or fine, or both, up to twice that otherwise authorized by this section. ~~[Except to the~~
14 ~~extent a greater minimum sentence is otherwise provided by this chapter, a sentence imposed under~~
15 ~~this paragraph shall include a mandatory minimum term of imprisonment of not less than one year.~~
16 ~~Neither the whole nor any part of the mandatory minimum sentence imposed under this paragraph~~
17 ~~shall be suspended or reduced.]~~

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

30 8 Sexual Assault and Related Offenses; Penalties. Amend RSA 632-A:10-a, I-II to read as
31 follows:

32 I. A person convicted of aggravated felonious sexual assault under:

33 (a) RSA 632-A:2, I(1) shall be sentenced in accordance with subparagraph (b) and
34 paragraphs II-V and may be sentenced to lifetime supervision under paragraph V.

35 (b) Any provision of RSA 632-A:2 shall be sentenced to a maximum sentence which is not
36 to exceed 20 years ~~[and a minimum which is not to exceed 1/2 of the maximum].~~

37 II. If a court finds that a defendant has been previously convicted under RSA 632-A:2 or any

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1 other statute prohibiting the same conduct in another state, territory or possession of the United
2 States, the defendant shall be sentenced to a maximum sentence which is not to exceed 40 years [~~and~~
3 ~~a minimum which is not to exceed 1/2 of the maximum~~].

4 9 Offenses Against the Family; Incest. Amend RSA 639:2, III to read as follows:

5 III. Notwithstanding the provisions of paragraph I, a person convicted of incest where the
6 victim is under the age of 18 shall be sentenced to a maximum sentence which is not to exceed 20
7 years [~~and a minimum which is not to exceed 1/2 the maximum. Notwithstanding the provisions of~~
8 ~~this paragraph, no person under 18 years of age shall be subject to any minimum sentence of~~
9 ~~imprisonment for a conviction of incest under this section.~~]

10 10 Child Pornography; Possession of Child Sexual Abuse Images. Amend RSA 649-A:3, II to
11 read as follows:

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

18 11 Child Pornography; Distribution of Child Sexual Abuse Images. Amend RSA 649-A:3-a, II(a)
19 to read as follows:

20 (a) If such person has had no previous convictions in this state or another state for the
21 conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to
22 exceed 20 years [~~and a minimum sentence not to exceed 1/2 of the maximum~~]. Upon conviction of an
23 offense under this section based on an indictment alleging that the person has been previously
24 convicted of an offense under this section or a reasonably equivalent offense in an out-of-state
25 jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 30 years [~~and a~~
26 ~~minimum sentence not to exceed 1/2 of the minimum~~].

27 12 Child Pornography; Manufacture of Child Sexual Abuse Images. Amend RSA 649-A:3-b, II to
28 read as follows:

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

35 13 Computer Pornography and Child Exploitation Prevention; Certain Uses of Computer
36 Services Prohibited. Amend RSA 649-B:4, II(b) to read as follows:

37 (b) A person convicted under paragraph I based on an indictment alleging that the

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1 person has been previously convicted of an offense under this section or a reasonably equivalent
2 offense in an out-of-state jurisdiction shall be charged as a class A felony. If the indictment also
3 alleges that the person believed that the child was under the age of 13, the person may be sentenced
4 to a maximum sentence not to exceed 20 years [~~and a minimum sentence not to exceed 10 years~~].

5 14 Sentences and Limitations. Amend RSA 651:2, II(d) to read as follows:

6 (d) Life imprisonment for murder in the second degree [~~and, in the case of a felony only,~~
7 ~~a minimum which is not to exceed 1/2 of the maximum, or if the maximum is life imprisonment, such~~
8 ~~minimum term as the court may order~~].

9 15 Sentences and Limitations. Amend RSA 651:2, II-e to read as follows:

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

18 16 Sentences; Calculation of Periods. Amend RSA 651:3, I to read as follows:

19 I. A sentence of imprisonment commences when it is imposed if the defendant is in custody
20 or surrenders into custody at that time. Otherwise, it commences when he **or she** becomes actually
21 in custody. All the time actually spent in custody prior to the time he **or she** is sentenced shall be
22 credited in the manner set forth in RSA 651-A:23 against the maximum term of imprisonment that is
23 imposed [~~and against any minimum term authorized by RSA 651:2 or 6~~].

24 17 Sentences; Extended Term of Imprisonment. Amend RSA 651:6, III to read as follows:

25 III. If authorized by paragraph I or II, and if written notice of the possible application of this
26 section is given the defendant at least 21 days prior to the commencement of jury selection for his or
27 her trial, a defendant may be sentenced to an extended term of imprisonment. An extended term is,
28 for a person convicted of:

29 (a) Any felony, other than murder or manslaughter, a [~~minimum to be fixed by the court~~
30 ~~of not more than 10 years and a~~] maximum to be fixed by the court of not more than 30 years;

31 (b) A misdemeanor, a [~~minimum to be fixed by the court of not more than 2 years and a~~]
32 maximum to be fixed by the court of not more than 5 years;

33 (c) Manslaughter, a [~~minimum to be fixed by the court of not more than 20 years and a~~]
34 maximum to be fixed by the court of not more than 40 years;

35 (d) Murder, life imprisonment;

36 (e) Two or more offenses under RSA 632-A:2, life imprisonment without parole;

37 (f) A third offense under RSA 632-A:3, life imprisonment; or

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1 (g) Any of the crimes listed under RSA 651:6, I(j), a [~~minimum to be fixed by the court of~~
2 ~~not less than 90 days and a~~] maximum of not more than one year.

3 18 Sentences; Extended Term of Imprisonment. Amend RSA 651:6, IV(a) to read as follows:

4 (a) There is a presumption that a person shall be sentenced to a [~~minimum to be fixed by~~
5 ~~the court of not less than 25 years and a~~] maximum of life imprisonment unless the court makes a
6 determination that the goals of deterrence, rehabilitation, and punishment would not be served,
7 based on the specific circumstances of the case, by such a sentence and the court makes specific
8 written findings in support of the lesser sentence. Before the court can determine whether the
9 presumption has been overcome, the court shall consider, but is not limited to, the following factors:

10 19 Sentences; Extended Term of Imprisonment. Amend RSA 651:6, V to read as follows:

11 V. If authorized by subparagraph I(p) and if notice of the possible application of this section
12 is given to the defendant prior to the commencement of trial, a person shall be sentenced to an
13 extended term of imprisonment as follows: [~~a minimum to be fixed by the court of not less than 35~~
14 ~~years and~~] a maximum of life imprisonment.

15 20 Sentence to County Correctional Facility; Reduction. Amend RSA 651:18, II to read as
16 follows:

17 II. Any prisoner whose conduct while in the custody of the superintendent of a county
18 correctional facility has been meritorious may be issued a permit and discharged by the
19 superintendent of the county department of corrections when he *or she* has served 2/3 of his *or her*
20 [~~minimum~~] sentence, provided it shall appear to the superintendent to be a reasonable probability
21 that he *or she* will remain at liberty without violating the law and will conduct himself *or herself* as
22 a good citizen.

23 21 Discretionary Sentences; Incarceration Under Suspended Sentence. Amend RSA 651:20 to
24 read as follows:

25 651:20 Incarceration Under Suspended Sentence.

26 I. Notwithstanding any other provision of law, except as provided in subparagraphs (a), (b),
27 and (c), the sentence to imprisonment of any person may be suspended by the sentencing court at the
28 time of imposition of the sentence or at any time thereafter in response to a petition to suspend
29 sentence which is timely brought in accordance with the limitations set forth below in subparagraphs
30 (a), (b), and (c).

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

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1 (1) For concurrent terms of imprisonment, [~~the minimum term shall be satisfied by~~
2 ~~servicing the longest minimum term imposed, and~~] the maximum term shall be satisfied by serving
3 the longest maximum term.

4 (2) For consecutive terms of imprisonment, [~~the minimum terms of each sentence~~
5 ~~shall be added to arrive at an aggregate minimum term, and~~] the maximum terms of each sentence
6 shall be added to arrive at an aggregate maximum term.

7 (b) A petition to suspend the sentence of any state prisoner may be brought at any time
8 if, prior to the petition being filed, the commissioner of the department of corrections has found that
9 the prisoner is a suitable candidate for suspension of sentence.

10 (c) A petition to suspend the sentence of any state prisoner may be brought at any time
11 by the attorney general in recognition of substantial assistance by the inmate in the investigation or
12 prosecution of a serious felony offense.

13 (d) Petitions filed which do not meet the criteria in (a), (b), or (c) above shall be dismissed
14 without a hearing.

15 II. A person whose sentence has been suspended may be required to report to the institution
16 to which he has been sentenced to be incarcerated during weekends or at such times or intervals of
17 time as the court may direct, except that weekend sentence provisions do not apply to the
18 New Hampshire state prison. Time so spent in said institution shall be deducted from the maximum
19 term[~~, and where there are both a minimum and maximum term, from both~~]. Any part of a day
20 spent in the institution shall count as a full day toward the sentence.

21 III. As a condition of any suspension of sentence, the court may include restitution to the
22 victim, as provided in RSA 651:62-67, performance of uncompensated public service as provided in
23 RSA 651:68-70, and such other conditions as the court may determine.

24 22 Discretionary Sentences; Release from State Prison. Amend RSA 651:25, VII(a)(2) to read as
25 follows:

26 (2) The prisoner has served at least 1/3 of the [~~minimum sentences~~] **sentence**
27 imposed by the court;

28 23 Review of State Prison Sentences; Application for Review. Amend RSA 651:58, II to read as
29 follows:

30 II. Upon imposition of the sentence the person sentenced shall be given oral and written
31 notice of his or her right to make such a request. This notice shall include a statement that review of
32 the sentence may result in a decrease or increase of the [~~minimum or~~] maximum term within the
33 limits fixed by law. A form for making the application shall accompany the notice. If an application
34 is filed, the clerk shall forthwith transmit it to the review division and shall notify the chief justice
35 and the judge who imposed the sentence of the filing.

36 24 Parole of Prisoners; Terms of Release. Amend RSA 651-A:6, I(a) to read as follows:

37 (a) A prisoner may be released on parole upon the expiration of the [~~minimum~~]

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1 **maximum** term of his or her sentence, minus any credits received pursuant to RSA 651-A:23, plus
2 the disciplinary period added [~~to such minimum~~] under RSA 651:2, II-e, any part of which is not
3 reduced for good conduct as provided in RSA 651-A:22, provided that there shall appear to the adult
4 parole board, after having given the notice required in RSA 651-A:11, to be a reasonable probability
5 that the prisoner will remain at liberty without violating the law and will conduct himself or herself
6 as a good citizen.

7 25 Parole of Prisoners; Credit for Confinement Prior to Sentencing. Amend RSA 651-A:23 to
8 read as follows:

9 651-A:23 Credit for Confinement Prior to Sentencing. Any prisoner who is confined to the state
10 prison, any house of correction, any jail or any other place shall be granted credit against [~~both the~~
11 ~~maximum and minimum terms~~] **the maximum term** of his **or her** sentence equal to the number of
12 days during which the prisoner was confined in jail awaiting and during trial prior to the imposition
13 of sentence and not under any sentence of confinement. The clerk of the court sentencing a prisoner
14 shall record in the mittimus the number of days of such confinement, and the credit provided for
15 herein shall be calculated on the basis of such information.

16 26 Methamphetamine-Related Offenses; Manufacture of Methamphetamine. Amend RSA 318-
17 D:2, II to read as follows:

18 II. Notwithstanding the provisions of RSA 318-B:26, I, a person convicted under this section
19 may be sentenced to imprisonment for not more than 30 years, a fine of not more than \$500,000, or
20 both. A person convicted under this section who has one or more prior offenses as defined in
21 RSA 318-B:27, shall be sentenced **up** to [~~imprisonment for not less than 5 years and not more than~~]
22 life imprisonment, a fine of not more than \$500,000, or both.

23 27 Sabotage Prevention. Amend RSA 649:2 and 649:3 to read as follows:

24 649:2 Intentional Injury to or Interference With Property. Whoever intentionally destroys,
25 impairs, injures, interferes or tampers with real or personal property with reasonable grounds to
26 believe that such act will hinder, delay or interfere with the preparation of the United States or of
27 any of the states for defense or for war, or with the prosecution of war by the United States, or by
28 any country with which the United States shall then maintain friendly relations, shall be guilty of a
29 class A felony. Provided, if such person so acts with the intent to hinder, delay or interfere with the
30 preparation of the United States or of any of the states for defense or for war, or with the prosecution
31 of war by the United States or by any country with which the United States shall then maintain
32 friendly relations, the [~~minimum~~] punishment shall be imprisonment for not [~~less~~] **more** than one
33 year.

34 649:3 Intentionally Defective Workmanship. Whoever intentionally makes or causes to be made
35 or omits to note on inspection any defect in any article or thing with reasonable grounds to believe
36 that such article or thing is intended to be used in connection with the preparation of the
37 United States or any of the states for defense or for war, or for the prosecution of war by the

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1 United States, or by any country with which the United States shall then maintain friendly
2 relations, or that such article or thing is one of a number of similar articles or things, some of which
3 are intended so to be used, shall be guilty of a class A felony. Provided, if such person so acts or so
4 fails to act with the intent to hinder, delay or interfere with the preparation of the United States or
5 of any of the states for defense or for war, or with the prosecution of war by the United States or by
6 any country with which the United States shall then maintain friendly relations, the ~~[minimum]~~
7 punishment shall be imprisonment for not ~~[less]~~ **more** than one year.

8 28 Repeal. RSA 651:2, II-b, relative to the minimum mandatory sentence for a second or
9 subsequent offense for felonious use of a firearm, is repealed.

10 29 Effective Date. This act shall take effect January 1, 2015.

HB 1580-FN - FISCAL NOTE

AN ACT repealing mandatory minimum sentences.

FISCAL IMPACT:

The Judicial Branch states this bill, **as introduced**, may have an indeterminable fiscal impact on state expenditures in FY 2015 and each year thereafter. The Department of Corrections and New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no fiscal impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill amends several RSA sections to repeal mandatory minimum sentences for criminal offenses. The Branch states if prosecutors bring the same number of cases this bill will have no fiscal impact on the Branch as it does not increase or decrease the caseload. However, if the number of cases going to trial or the length of those trials is impacted it will have an indeterminable fiscal impact on the Branch. The Branch has no way to determine if this bill will impact its caseload or the types of trials that might occur to determine the fiscal impact.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department has no information to determine the impact on home confinement. The Department states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2013 was \$32,872. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2013 was \$570.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties will have increased expenditures. The Association is unable to determine the number of individuals who may be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Judicial Council assumes this bill will not increase or decrease the number of criminal charges filed by police and prosecutors and would result in no change in the number of cases filed against criminal defendants. The Council states the bill changes sentencing practices but would not change the number of cases handled by the indigent defense delivery system.

The Department of Justice state this bill will have no fiscal impact because it does not increase or decrease the number of cases, only addresses the potential sentence upon conviction.