

# TITLE LXII

# CRIMINAL CODE

## CHAPTER 625

## PRELIMINARY

### Section 625:9

#### **625:9 Classification of Crimes. –**

- I. The provisions of this section govern the classification of every offense, whether defined within this code or by any other statute.
- II. Every offense is either a felony, misdemeanor or violation.
  - (a) Felonies and misdemeanors are crimes.
  - (b) A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.
- III. A felony is murder or a crime so designated by statute within or outside this code or a crime defined by statute outside of this code where the maximum penalty provided is imprisonment in excess of one year; provided, however, that a crime defined by statute outside of this code is a felony when committed by a corporation or an unincorporated association if the maximum fine therein provided is more than \$200.
  - (a) Felonies other than murder are either class A felonies or class B felonies when committed by an individual. Felonies committed by a corporation or an unincorporated association are unclassified.
    - (1) Class A felonies are crimes so designated by statute within or outside this code and any crime defined by statute outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of 7 years.
    - (2) Class B felonies are crimes so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of one year but not in excess of 7 years.
- IV. Misdemeanors are either class A misdemeanors or class B misdemeanors when committed by an individual. Misdemeanors committed by a corporation or an unincorporated association are unclassified.
  - (a) A class A misdemeanor is any crime so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment not in excess of one year.
  - (b) A class B misdemeanor is any crime so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty does not include any term of imprisonment or any fine in excess of the maximum provided for a class B misdemeanor in RSA 651:2, IV(a).
  - (c) Any crime designated within or outside this code as a misdemeanor without specification of the classification shall be presumed to be a class B misdemeanor unless:
    - (1) An element of the offense involves an "act of violence" or "threat of violence" as defined in paragraph VII;
    - (2) The state files a notice of intent to seek class A misdemeanor penalties on or before the date of arraignment. Such notice shall be on a form approved in accordance with RSA 490:26-d; or
    - (3) The misdemeanor charge is filed directly in superior court.
  - (d) Nothing in this paragraph shall prohibit the state from reducing any offense originally charged as a class A misdemeanor to a class B misdemeanor at any time with the agreement of the person charged.
- 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. 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.

**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. 2006, 64:3. 2009, 142:1, 2, eff. Oct. 1, 2009. 2019, 121:1, eff. Jan. 1, 2020.