

TITLE LXII

CRIMINAL CODE

CHAPTER 651

SENTENCES

General Provisions

Section 651:2

651:2 Sentences and Limitations. –

- I. A person convicted of a felony or a Class A misdemeanor may be sentenced to imprisonment, probation, conditional or unconditional discharge, or a fine.
- II. If a sentence of imprisonment is imposed, the court shall fix the maximum thereof which is not to exceed:
- (a) Fifteen years for a class A felony,
 - (b) Seven years for a class B felony,
 - (c) One year for a class A misdemeanor,
 - (d) Life imprisonment for murder in the second degree, and, in the case of a felony only, a minimum which is not to exceed 1/2 of the maximum, or if the maximum is life imprisonment, such minimum term as the court may order.
- II-a. A person convicted of murder in the first degree shall be sentenced as provided in RSA 630:1-a.
- II-b. A person convicted of a second or subsequent offense for the felonious use of a firearm, as provided in RSA 650-A:1, shall, in addition to any punishment provided for the underlying felony, be given a minimum mandatory sentence of 3 years imprisonment. Neither the whole nor any part of the additional sentence of imprisonment hereby provided shall be served concurrently with any other term nor shall the whole or any part of such additional term of imprisonment be suspended. No action brought to enforce sentencing under this section shall be continued for sentencing, nor shall the provisions of RSA 651-A relative to parole apply to any sentence of imprisonment imposed.
- II-c. [Repealed.]
- II-d. A person convicted of manslaughter shall be sentenced as provided in RSA 630:2, II.
- II-e. To the minimum sentence of every person who is sentenced to imprisonment for a maximum of more than one year shall be added a disciplinary period equal to 150 days for each year of the minimum term of the sentence, to be prorated for any part of the year. The presiding justice shall certify, at the time of sentencing, the minimum term of the sentence and the additional disciplinary period required under this paragraph. This additional disciplinary period may be reduced for good conduct as provided in RSA 651-A:22 and for earned time as provided in RSA 651-A:22-a. There shall be no addition to the sentence under this section for the period of pre-trial confinement for which credit against the sentence is awarded pursuant to RSA 651-A:23.
- II-f. A person convicted of violating RSA 159:3-a, I shall be sentenced as provided in RSA 159:3-a, II and III.
- II-g. If a person is convicted of a felony, an element of which is the possession, use or attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for the crime.
- III. A person convicted of a class B misdemeanor may be sentenced to conditional or unconditional discharge, a fine, or other sanctions, which shall not include incarceration or probation but may include monitoring by the department of corrections if deemed necessary and appropriate.
- III-a. A person convicted of a violation may be sentenced to conditional or unconditional discharge, or a fine.
- IV. A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. The limitations on amounts of fines authorized in subparagraphs (a) and (b) shall not include the amount of any civil penalty, the imposition of which is authorized by statute or by a properly adopted local ordinance, code, or regulation. The amount of any fine imposed on:

(a) Any individual may not exceed \$4,000 for a felony, \$2,000 for a class A misdemeanor, \$1,200 for a class B misdemeanor, and \$1,000 for a violation.

(b) A corporation or unincorporated association may not exceed \$100,000 for a felony, \$20,000 for a misdemeanor and \$1,000 for a violation. A writ of execution may be issued by the court against the corporation or unincorporated association to compel payment of the fine, together with costs and interest.

(c) If a defendant has gained property through the commission of any felony, then in lieu of the amounts authorized in paragraphs (a) and (b), the fine may be an amount not to exceed double the amount of that gain.

V. (a) A person may be placed on probation if the court finds that such person is in need of the supervision and guidance that the probation service can provide under such conditions as the court may impose. The period of probation shall be for a period to be fixed by the court not to exceed 5 years for a felony and 2 years for a class A misdemeanor, provided that the court may extend or modify the period of probation in accordance with subparagraph VII(a). Upon petition of the probation officer or the probationer, the period may be terminated sooner by the court if the conduct of the probationer warrants it.

(b) In cases of persons convicted of felonies or class A misdemeanors, or in cases of persons found to be habitual offenders within the meaning of RSA 259:39 and convicted of an offense under RSA 262:23, the sentence may include, as a condition of probation, confinement to a person's place of residence for not more than one year in case of a class A misdemeanor or more than 5 years in case of a felony. Such home confinement may be monitored by a probation officer and may be supplemented, as determined by the department of corrections or by the county department of corrections, by electronic monitoring to verify compliance.

(c) Upon recommendation by the department of corrections or by the county department of corrections, the court may, as a condition of probation, order an incarceration-bound offender placed in an intensive supervision program as an alternative to incarceration, under requirements and restrictions established by the department of corrections or by the county department of corrections.

(d) Upon recommendation by the department of corrections or by the county department of corrections, the court may sentence an incarceration-bound offender to a special alternative incarceration program involving short term confinement followed by intensive community supervision.

(e) The department of corrections and the various county departments of corrections shall adopt rules governing eligibility for home confinement, intensive supervision and special alternative incarceration programs.

(f) Any offender placed in a home confinement, intensive supervision or special alternative incarceration program who violates the conditions or restrictions of probation shall be subject to immediate arrest by a probation officer or any authorized law enforcement officer and brought before the court for an expeditious hearing pending further disposition.

(g) The court may include, as a condition of probation, restitution to the victim as provided in RSA 651:62-67 or performance of uncompensated public service as provided in RSA 651:68-70.

(h) In cases of a person convicted of a felony or class A misdemeanor, a court may require such person to be screened and/or evaluated for risk of substance use disorders at an impaired driver care management program (IDCMP) approved by the department of health and human services, and to comply with the treatment plan developed by the IDCMP as established under RSA 265-A:40, if the evidence demonstrates that substances were a contributing factor in the commission of the offense and if such person has the ability to pay the fees for the program in full.

(i) The court may include, as a condition of probation, a jail sentence of up to 30 days that a probation/parole officer may impose in segments of one to 7 days over the course of the probation period, in response to any violation of a condition of probation, in lieu of a violation of probation hearing. Such jail sanction shall be served at the county jail facility closest to or in reasonable proximity to where the probationer is under supervision.

VI. (a) A person may be sentenced to a period of conditional discharge if such person is not imprisoned and the court is of the opinion that probationary supervision is unnecessary, but that the defendant's conduct should be according to conditions determined by the court. Such conditions may include:

(1) Restrictions on the defendant's travel, association, place of abode, such as will protect the victim of the crime or insure the public peace;

(2) An order requiring the defendant to attend counselling or any other mode of treatment the court deems appropriate;

(3) Restitution to the victim; and

(4) Performance of uncompensated public service as provided in RSA 651:68-70.

(b) The period of a conditional discharge shall be 3 years for a felony and one year for a misdemeanor or violation. However, if the court has required as a condition that the defendant make restitution or reparation to the victim of the defendant's offense or that the defendant perform uncompensated public service and that condition has not been satisfied, the court may, at any time prior to the termination of the above periods, extend the period for a felony by no more than 2 years and for a misdemeanor or violation by no more than one year in order to allow the defendant to satisfy the condition. During any period of conditional discharge the court may, upon its own motion or on petition of the defendant, discharge the defendant unconditionally if the conduct of the defendant warrants it. The court is not required to revoke a conditional discharge if the defendant commits an additional offense or violates a condition.

VI-a. [Repealed.]

VI-b. A person sentenced to conditional discharge under paragraph VI may apply for annulment of the criminal record under RSA 651:5.

VII. (a) If a probationer violates his or her probation, the court may order any of the following:

(1) Continue the sentence of probation.

(2) Modify the conditions of the probation.

(3) Extend the period of probation, provided the probationer agrees to the extension and the original period of probation plus any extension shall not exceed the probation periods authorized in paragraph V.

(4) Revoke the sentence of probation.

(b) When a sentence of probation or a conditional discharge is revoked, the probationer may be fined, as authorized by paragraph IV, if a fine was not imposed in addition to the probation or conditional discharge. Otherwise, the probationer shall be sentenced to imprisonment as authorized by paragraph II.

VIII. A person may be granted an unconditional discharge if the court is of the opinion that no proper purpose would be served by imposing any condition or supervision upon the defendant's release. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

Source. 1971, 518:1. 1973, 370:2. 1974, 34:13, 14. 1977, 397:1; 403:2. 1979, 126:6; 377:8. 1981, 397:1. 1982, 36:2. 1983, 382:8. 1986, 156:4. 1988, 19:4. 1989, 295:2. 1990, 95:1. 1991, 355:102. 1992, 19:1; 269:8-10; 284:85, 86, XIII. 1994, 192:1, 2. 1995, 237:4. 1996, 93:2-9. 1998, 366:3. 1999, 158:4. 2006, 163:1; 260:33. 2010, 247:12; Sp. Sess., 1:24. 2011, 268:2. 2012, 228:10. 2013, 156:8. 2014, 166:2, eff. Sept. 9, 2014; 176:10, eff. July 1, 2014. 2017, 35:1, 2, eff. July 8, 2017.