Bill as Introduced

HB 333 – INTRODUCED

2003 SESSION

03-0078
04/10

HOUSE BILL ***333***

AN ACT relative to sentences for first time offenders.

SPONSORS: Rep. Pantelakos, Rock 86

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill permits the court to offer a reduced sentence to defendants who have been convicted of a nonviolent first offense.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 333 - AS INTRODUCED

03-0078
04/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to sentences for first time offenders.

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

1 New Paragraph; Sentences and Limitations. Amend RSA 651:2 by inserting after paragraph VIII the following new paragraph:

IX. The court shall have the discretion to impose a reduced sentence to defendants who have been convicted of a nonviolent first offense.

2 Effective Date. This act shall take effect January 1, 2004.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 333 Date 2/4/2003

Committee CJ & PS

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Claire Ebel	18 Low Av Concord	225-3080	NHCLU	X	
support 1st. offender statute					

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 333

BILL TITLE: **relative to sentences for first time offenders.**

DATE: **Feb. 4, 2003**

LOB ROOM: **204** **Time Public Hearing Called to Order:** 10:30

Time Adjourned: 11:10

(please circle if present)

Committee Members: Reps. Welch, Tholl, Fesh, Jones, Kennedy, K. Gilbert, Nedeau, Stevens, Weare, Bomie, Bicknell, Fish, Oliver, D. Smith, Winchell, Knowles, Callaghan, Movsesian, Berube, Pantelakos and T. Robertson.

Bill Sponsors: Rep. Pantelakos

TESTIMONY

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

*Rep. Pantelakos, sponsor, supporting
-asked to have the language changed
-not happy with the way this came out

Rep. Robertson
-there is no fiscal note

Rep. Bicknell – what else, other than jail

*Mayor E. Sirrell, Portsmouth, representing self
-submitted written testimony

Question - Rep. Robertson – what was he charged with?
-sexual assault
-gun charges
-kidnapping
Question – Rep. Smith
-girlfriend?
Question – Rep. Bicknell
-how does this apply to a first time offender?

*Lorraine Higgins, 16 Hillcrest Drive, Merrimack
- submitted written testimony, supporting bill

Ann Rice, Attorney General's Office, neither supporting nor opposing

-speaking for information only
-as written isn't needed as judge now has that power unless prescribed by law

Rep. Smith questions the make up of the committee
-3 Judges

Rep. Bicknell questions for non-violent crimes
-all evidence is violent crimes

HEARING CLOSED AT 11:10 A.M.

Respectfully submitted,

Stephen H. Nedeau

Rep. Stephen Nedeau,
Acting Clerk of the Committee

Testimony

CHAPTER _____

CHAPTER ____-2003

HOUSE BILL _____

AN ACT allowing fair sentencing for First Time Offenders.

SPONSORS: Rep. Laura Pantelakos Rockingham 30

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill provides the "First Time Offender" , with certain criteria to be met, to be sentenced to "concurrent sentences" for multiple convictions and certain discretionary sentences.

Explanation:

Matter removed from current law appears in brackets.

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 Three Thousand

AN ACT allows fair sentencing for "First Time Offenders".

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

_____ First Time Offenders; Penalties; Consecutive Sentences Amended RSA 651:3, III, to read as follows:

III. **CONSECUTIVE SENTENCES** and the **FIRST TIME OFFENDER**,

In any case where a person is convicted of two or more offenses punishable by imprisonment and is sentenced for more than one of these offenses, (s)he may be sentenced to as many terms of imprisonment as there are offenses of which (s)he is convicted.

Under New Hampshire law, a first time offender is treated fair upon sentencing. If the person under arrest has previously been convicted and sentenced to either a county jail or a state prison for a term of imprisonment, (s)he has failed to comply to the milder sentence and must receive a heavier punishment. Pursuant to ( ) "upon conviction...based upon a complaint which alleged that the

person has had one or more prior convictions...(in this State) or under reasonably equivalent offenses in an out-of-state jurisdiction, within 7-years preceding the date of the second or subsequent offense"

When greater penalties are prescribed for a second offense or a subsequent offense, they cannot be imposed without the allegations and proof of prior convictions. The complaint in (these) subsequent case(s) must allege that the person was previously convicted in this State or another State within 7-years to the subsequent arrest, and shall contain the name of the court of conviction(s) and, the date(s) of the convictions.

Notwithstanding the fact that the State must allege and prove the existence of the prior convictions beyond a reasonable doubt, proof of a prior conviction(s) is not an element of the offense but, legislature's purpose in classifying ( ) subsequent offenses for repeat offenders was not to add an element to the offenses but, to enhance the penalties for repeated offenders. A prior conviction therefore, is relevant only to sentencing.

note: a prior conviction,sentence and imprisonment is a prerequisite for imposing "consecutive sentences" without those certain criteria the offender, is to be treated and sentenced as a "First Time Offender" and will receive "concurrent sentences" for multiple convictions.

IV. **First Time Offender** will not receive "consecutive sentences" in the first instance for the obvious reasons, the State cannot file a complaint that has prior convictions that resulted in imprisonment.

B). In all cases where multiple or additional sentences have been imposed, the term or terms of imprisonment under those sentences shall be determined in accordance with the following:

1) When terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

2) When terms run consecutively, the minimum terms are added together to arrive at an aggregate minimum sentence to be served equal to the sum of all minimum terms and the maximum terms are added together to arrive at an aggregate maximum sentence equal to the sum of all maximum terms of imprisonment.

Any person incarcerated upon the effective date of this statute, pursuant to RSA 651:3, III (repealed 1975, 2003) "First Time Offender", may apply immediately to the superior court for review and reduction.

LORRAINE HIGGINS 3 PAGES.

(I'm not sure if the committee chairmen will ask you for your name and address or not, before you speak. Just in case he does, you will be prepared because I included these essentials in your speech)

(first you need to take a deep breath and relax...you will do great!)

(greet the committee) Good-morning

My name is Lorraine Higgins, me and my husband Jack live at 16 Hillcrest Drive in Merrimack, N.H.

(the committee members might ask you questions about how long you and Jack have lived in Merrimack, how long you and Jack have lived in New Hampshire...etc etc..)

We're here today because New Hampshire Representatives and the people of New Hampshire have realized that the way our criminal justice system sentences our **"First-Time Offenders"** with multiple convictions is unfair and costly.

This proposed **"First-Time Offender"** bill couldn't have come at a better time. Property owners in every single town and city in New Hampshire are being hurt by the criminal justice system and the current educating funding system. It is not fair.

My husband and I live in Merrimack. Like our friends and neighbors, we are suffering to make ends meet. The costs of education and incarcerating individuals is crippling our economy. My husband and I should be thinking about enjoying the good-life, retirement and playing with our grandchildren instead of having to work. We find ourselves struggling to pay bills and our taxes have gone through the roof. Our State, our legislatures need to place some type of limits on the sentences that judges can impose.

I'm not saying that we should not punish criminals and I'm not saying that we should just let people go with just a slap on the wrist. I'm merely saying that, "we should have a fair system" a system that allows the offender a chance at rehabilitation.

Our current practice of incarcerating every single individual is no longer the alleged-victim's problem. The incarceration of the alleged-offender falls on the New Hampshire "taxpayers". It doesn't make any sense to me and my husband that our State would rather pay good money to incarcerate individuals verse funding education or providing for the elderly individuals who took the time and patients to pave the way so that we could have a better life. Our elderly citizens have worked and paid our way. We seem to be re-paying their kindness and what they've given us by ignoring them and their needs. At some point we need to stop this cycle. Our elderly and needy should be cared for because they gave us what we have today. They are the reasons that we have what we have.

Alot of you have received a package in the mail concerning the **disparity of sentences** and how the New Hampshire Prison "Administration" operates.
(this is the material that I mailed to you)

In this package I read how, by passing the **"First-Time Offender"** bill, New Hampshire "taxpayers" can save more than

$5 million in "tax-dollars" plus it demonstrates "fairness" to the individual who has never been convicted and sentenced to either a jail or prison. It is my belief that "deterrence" is time actually served in either "jail or prison".

It is my understanding from reading the package that I received that judges must follow the laws set by New Hampshire legislatures. Reading the statute on **"consecutive sentences"** RSA 651:3, III (repealed in 1975) it appears to me that, only offenders with escapes or repeat offenders fall under this statute. I believe that I'm correct by saying, New Hampshire does not have a statute that authorizes judges to impose **"consecutive sentences"** to individuals who have not had the milder sentence or the deterrent that is required.

(this is where you can hand out to committee members the "First-Time Offender" bill that I mailed to you, what I feel the law should look like when finished)

(after the members receive them, wait a minute while they look it over)

(when you notice one or more looking at you, you can either, ask if you should continue or just start speaking)

I received a copy of what the **"First-Time Offender"** bill should look like after these hearings. I think that many of you in here will admit, the end result is fair and helpful. The statute explains clearly and precisely what legislatures intent is.

February 4, 2003

Committee: Criminal Justice and Public Safety

Sponsors: Rep. Laura Pantelakos, Rockingham 30.

House Bill 333

First Time Offender Bill

Good morning,

My name is Mayor Evelyn Sirrell, Portsmouth, N. H.

I come to you this morning not as the Mayor of Portsmouth, but with a very deep concern regarding my son who is in New Hampshire State Prison and that is why I am here to speak on the First Time Offender Bill.

My son was convicted on circumstantial evidence. There were no eye witnesses to these charges and

he did get acquitted of many of the counts. An injustice was done to my son, no question about it. He was given a sentence of a career criminal with consecutive sentences on the two charges that were left. The judge never even looked to see that he was a first time offender.

Under New Hampshire State Law, a first time offender is treated fair upon sentencing. He received more time from the judge than a murderer.

"Never looking at his record, because he had none. He was a first time offender sentenced to consecutive sentences." New Hampshire State Law says this cannot be done. But yet the judge was allowed to get away with it.

It has been quite an education for me, walking into that prison and seeing the murders getting lesser sentences than my son because they took a plea bargain and my son would not because he was not

guilty. They punish you for not taking a plea bargain in this state.

You wonder why your prisons are over crowded and it is possible that another prison will have to be built. And you wonder why!

Look to the injustice of some of your judges. Donna Sytek's bill, Truth and Sentencing, said she believed New Hampshire judges would give fair sentences. Some are, but there are always a few who do not know how to promote fairness or even care.

"Under New Hampshire State Law, a first time offender is treated fair upon sentencing." Do you call it a fair sentence when he gets more time than a murderer, I think not!

There are apparently 40 first time offenders at New Hampshire State Prison, just sitting around and doing nothing. Why don't they be sent to a County jail and

be placed on a work release program. That way at least they could pay child support payments.

My son has a 7 year old boy who had to be pulled from a wonderful education at the Christian Academy because his mother could not pay the bill without child support. The sentence the judge gave my son, this boy will be 17 years old or possibly 25 years old when he gets out.

It is in your hands to listen to the plea's brought forward today.

Please listen.

I know this Committee will work for fairness for the First Time Offenders.

Please promote fairness.

Thank you.

Evelyn Lewis

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 333

BILL TITLE: **relative to sentences for first time offenders.**

DATE: February 13, 2003

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. Weare

Seconded by Rep. Movsesian

Vote: 20-0 (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: 20-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: 333 **Title:** _____

PH Date: ___/___/___ **Exec Session Date:** 2/13/03

Motion: ITL **Amendment #:** _____

MEMBER	YEAS	NAYS
Welch. David A. Chairman	✓	
Tholl. John E. V Chairman	✓	
Fesh. Bob M	✓	
Jones. Constance A	✓	
Kennedy. Richard E	✓	
Gilbert. Karl I	✓	
Nedeau. Stephen H	✓	
Stevens. Stanley E	✓	
Weare. E Albert	✓	
Bemis. Alan B	✓	
Bicknell. Elbert I	✓	
Fish. Douglas K	✓	
Oliver. James H	✓	
Smith. Donald C	✓	
Winchell. George D	✓	
Knowles. William V	✓	
Berube. Roger R		
Callaghan. Frank D	✓	
Movsesian. Lori A	✓	
Pantelakos. Laura C	✓	
Robertson. Timothy N	✓	
	20	0

TOTAL VOTE:
Printed: 1/6/2003

Committee Report

F

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 333**

TITLE: relative to sentences for first time offenders.

DATE: Feb. 13, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Present law, RSA 651:2, allows the presiding judge wide discretionary powers in sentencing all offenders for most crimes regardless if the individual is a first offender or not. To limit or require judges to give a specific sentence for first-time offenders would severely limit the discretionary powers judges possess in awarding sentences and would be a questionable conflict of the separation of powers of the three branches of government.

Vote 20-0.

Rep. E. Albert Weare
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 333, relative to sentences for first time offenders. **INEXPEDIENT TO LEGISLATE**

Rep. E. Albert Weare for Criminal Justice and Public Safety: Present law, RSA 651:2, allows the presiding judge wide discretionary powers in sentencing all offenders for most crimes regardless if the individual is a first offender or not. To limit or require judges to give a specific sentence for first-time offenders would severely limit the discretionary powers judges possess in awarding sentences and would be a questionable conflict of the separation of powers of the three branches of government. **Vote 20-0.**

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 333**

TITLE: relative to sentences for first time offenders.

DATE: Feb. 13, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

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(Include Committee Vote)

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Time

Vote 20-0.

Rep. E. Albert Weare
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 333**

TITLE: relative to sentences for first time offenders.

DATE: Feb. 13, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Present law, RSA 651:2, allows the presiding judge wide discretionary powers in sentencing all offenders for most crimes regardless if the individual is a first offender or not. To limit or require judges to a given sentence for first offenders would severely limit the discretionary powers judges possess in awarding sentences and would be a questionable conflict of the separation of powers of the three branches of government.

Vote 20-0.

Rep. E. Albert Weare
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT