

Hampshire. A final conviction is a judgment of conviction as to which all rights of direct appellate review have been exhausted or waived.

5. The NHDOC will determine whether an alien prisoner may be released pursuant to NH RSA 651:25, VII (as inserted by Chapter 144:63 of HB 2, 2009)) (see Attachment 2), whereby the alien prisoner must have served at least 1/3 of the minimum sentence imposed by the court; the alien prisoner was not convicted of a violent crime, or any crime of obstruction of justice, or sentenced to an extended term of imprisonment under NH RSA 651:6 (see Attachment 3); and the alien prisoner was not convicted of a sexual offense as defined in NH RSA 651-B:1, V (see Attachment 4)
6. The NHDOC will only identify a custodial alien as eligible for Rapid REPAT if the alien has exhausted, or has freely and voluntarily waived in writing, all administrative and judicial appellate rights to the removal order, and if the alien agrees in writing to fully cooperate with ICE to obtain valid travel documentation and otherwise facilitate removal (see MOU). Upon an eligible alien's election to participate in Rapid REPAT, NHDOC will provide ICE with documentation evidencing the alien's waiver and agreement to cooperate with ICE to obtain valid travel documentation and to otherwise facilitate with the removal; such documentation must be signed by the alien.
7. The NHDOC will submit a written request (Attachment 6) to ICE for removal of such aliens as required pursuant to the MOU.
8. Once ICE accepts an alien into the Rapid REPAT program, receives appropriate documentation evidencing the alien's waiver and agreement, and determines that the alien's removal is significantly likely in the reasonably foreseeable future, NHDOC will coordinate with ICE to schedule a conditional release date for the alien to be transferred to ICE. Aliens who do not require a law enforcement escort and who possess valid travel documents can be scheduled in advance for removal so that when ICE takes custody of the alien, the alien can be removed within 72 hours.
9. In the event of a disqualifying condition, NHDOC will promptly return the alien to State custody to finish out the remainder of his/her sentence. Disqualifying conditions include but are not limited to cases where: valid travel documents cannot be obtained for the alien within 30 days of the alien entering into ICE custody; the alien seeks administrative or judicial review or challenges his or her removal order, conviction or sentence; ICE determines that removal is not significantly likely in the reasonably foreseeable future; or ICE determines that the alien otherwise failed to cooperate with ICE. NHDOC must take custody of the alien and transport the alien, at its own expense, within 72 hours of being so notified by ICE as to any disqualifying condition. NHDOC will maintain exclusive control and responsibility for the custody and transportation of aliens from any ICE detention facility to any NHDOC prison facility in the event of notice by ICE of a disqualifying condition.
10. NHDOC will provide written notice, as required in the MOU, to aliens identified as eligible for Rapid REPAT of the penalties under the law of the United States relating to the reentry of deported aliens, including reentry into the United States requires return of such aliens to NHDOC to finish out the remainder of their sentences and that such aliens are also subject to prosecution pursuant to section 276 of the INA, 8 U.S.C. § 1326, whereby expanded penalties for aliens removed under this program exist. The alien must waive in writing any and all rights of extradition which would challenge the alien's return to NHDOC to complete the remainder of his/her sentence. NHDOC must obtain acknowledgment in writing (Attachment 6) that these notices were given to aliens identified as eligible for Rapid REPAT.
11. An alien who is rejected for the REPAT program for any reason will be returned to New Hampshire within 72 hours. The NHDOC shall arrange for the alien's transportation back to New Hampshire at state expense to complete the remainder of his/her sentence.

References:

Standards for the Administration of Correctional Agencies
Second Edition Standards

Standards for Adult Correctional Institutions
Fourth Edition Standards

Standards for Adult Community Residential Services
Fourth Edition Standards

Standards for Adult Probation and Parole Field Services
Third Edition Standards

Other

WRENN/ck

Attachments

**MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, OFFICE OF
DETENTION AND REMOVAL OPERATIONS, AND THE STATE OF NEW
HAMPSHIRE REGARDING
THE RAPID REPATRIATION OF REMOVABLE CUSTODIAL ALIENS FROM THE
UNITED STATES TO THEIR HOME COUNTRIES**

I. PARTIES.

The parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE), as represented by the Office of Detention and Removal Operations (DRO), and the New Hampshire Department of Corrections (NHDOC).

II. AUTHORITY.

Section 241(a)(4)(B)(ii) of the Immigration and Nationality Act (INA or Act), codified at 8 U.S.C. § 1231(a)(4)(B)(ii), as amended by the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of ICE, in coordination with a State or political subdivision of a State, to remove certain aliens in the custody of that State prior to completion of a sentence of imprisonment. New Hampshire Revised Statute § 651:25, VII (2009) authorizes the Commissioner of Corrections to release a removal prisoner to the custody of ICE. This MOU constitutes a written agreement as to the exercise of these authorities.

III. PURPOSE.

The purpose of this MOU is to set forth terms by which ICE and NHDOC will cooperate in a Rapid Repatriation of Eligible Custodial Aliens Accepted for Transfer (Rapid REPAT) program, which allows the State of New Hampshire to release a prisoner who is serving a New Hampshire state sentence to the custody of ICE, and allows ICE to remove certain aliens in the custody of a State prior to completion of a sentence of imprisonment.

IV. RESPONSIBILITIES:

A. NHDOC undertakes the following responsibilities:

- 1) NHDOC will initiate the Rapid REPAT process by identifying eligible custodial aliens confined pursuant to a final conviction for a nonviolent offense as defined in section 241(a)(4)(B)(i) of the INA, 8 U.S.C. § 1231(a)(4)(B)(i), and determining that the removal is appropriate and in the best interest of the State of New Hampshire. In addition, NHDOC will determine whether a prisoner may be released pursuant to New Hampshire Revised Statute § 651:25, VII (2009), whereby the prisoner must have served at least 1/3 of the minimum sentence imposed by the court; the prisoner was not convicted of a violent crime, or any crime of obstruction of justice, or sentenced to an extended term of imprisonment under New Hampshire Revised Statute § 651:6; and the prisoner was not convicted of a sexual offense as defined in New Hampshire Revised Statute § 651-B:1, V. NHDOC must submit a written request to ICE for removal of such aliens as required

pursuant to section 241(a)(4)(B)(ii) of the INA, 8 U.S.C. § 1231(a)(4)(B)(ii). A final conviction is a judgment of conviction as to which all rights of direct appellate review have been exhausted or waived.

- 2) NHDOC will only identify a custodial alien as eligible for Rapid REPAT if the alien has exhausted, or has freely and voluntarily waived in writing, all administrative and judicial appellate rights to the removal order, and if the alien agrees in writing to fully cooperate with ICE to obtain valid travel documentation and otherwise facilitate removal. *See* INA § 243(a)(1), 8 U.S.C. § 1253(a)(1). Upon an eligible alien's election to participate in Rapid REPAT, NHDOC will provide ICE with documentation evidencing the alien's waiver and agreement to cooperate with ICE to obtain valid travel documentation and to otherwise facilitate with the removal, and such documentation must be signed by the alien.
- 3) Once ICE accepts an alien into the Rapid REPAT program, receives appropriate documentation evidencing the alien's waiver and agreement, and determines that the alien's removal is significantly likely in the reasonably foreseeable future, NHDOC will coordinate with ICE to schedule a conditional release date for the alien to be transferred to ICE. Aliens who do not require a law enforcement escort and who possess valid travel documents can be scheduled in advance for removal so that when ICE takes custody of the alien, the alien can be removed within seventy-two (72) hours.
- 4) In the event of a disqualifying condition, NHDOC will promptly return the alien to State custody to finish out the remainder of his/her sentence. Disqualifying conditions include but are not limited to cases where: a valid travel document cannot be obtained for the alien within thirty (30) days of the alien entering into ICE custody; the alien seeks administrative or judicial review or challenges his or her removal order, conviction or sentence; ICE determines that removal is not significantly likely in the reasonably foreseeable future; or ICE determines that the alien otherwise failed to cooperate with ICE. NHDOC must take custody of the alien and transport the alien, at its own expense, within seventy-two (72) hours of being so notified by ICE as to any disqualifying condition. NHDOC will maintain exclusive control and responsibility for the custody and transportation of aliens from any ICE detention facility to any NHDOC prison facility in the event of notice by ICE of a disqualifying condition.
- 5) NHDOC will provide written notice, as required under section 241(a)(4)(C) of the INA, 8 U.S.C. § 1231(a)(4)(C), to aliens identified as eligible for Rapid REPAT of the penalties under the law of the United States relating to the reentry of deported aliens, including reentry into the United States requires return of such aliens to NHDOC to finish out the remainder of their sentences and that such aliens are also subject to prosecution pursuant to section 276 of the INA, 8 U.S.C. § 1326, whereby expanded penalties for aliens removed under this program exists. The alien must waive in writing any and all rights of extradition which would challenge the alien's return to NHDOC to complete the remainder of his/her sentence. NHDOC must obtain acknowledgment in writing that these notices were given to aliens identified as eligible for Rapid REPAT.

- 6) NHDOC shall arrange for the alien's transportation back to New Hampshire at state expense to complete the remainder of his/her sentence within seventy-two (72) hours of ICE's notification that the alien has reentered the United States. NHDOC will maintain exclusive control and responsibility for the custody and transportation of an alien from any ICE detention facility to any NHDOC prison facility.

B. ICE undertakes the following responsibilities:

- 1) When NHDOC identifies a custodial alien as eligible for Rapid REPAT pursuant to section IV.A.1 of this MOU, ICE will evaluate the alien's administrative file and relevant databases to ascertain if there is an administratively final order of removal. If no final order exists, ICE will notify NHDOC that the alien is not currently eligible for Rapid REPAT. If the alien is subject to a final order, ICE will then determine if removal of the alien is significantly likely in the reasonably foreseeable future. If the alien's removal is not reasonably foreseeable, ICE will notify NHDOC that it will not take custody of the alien because the alien's removal from the United States is not significantly likely in the reasonably foreseeable future. If ICE determines that the alien can be removed in the reasonably foreseeable future, ICE will notify NHDOC that the alien has been tentatively accepted into the Rapid REPAT program. ICE reserves the right of refusal to accept any alien into the program.
- 2) ICE will assume custody of an alien for Rapid REPAT purposes only if, the custodial alien has exhausted or waived all administrative and judicial appellate rights, including any collateral rights to contest the alien's removal order. However, in the event of a disqualifying condition as defined in paragraph IV.A.4, ICE shall notify NHDOC of the disqualifying condition so that NHDOC can transport the alien back to state custody at NHDOC expense, within 72 hours of notification.
- 3) Upon encountering an alien removed pursuant to this program who thereafter reenters the United States, ICE will notify NHDOC of the reentry so that NHDOC can arrange for the alien's transportation back to NHDOC custody, pursuant to paragraph IV.A.6 of this MOU, to complete his/her state sentence. As noted above, such aliens may also be subject to federal prosecution pursuant to section 276 of the INA, 8 U.S.C. § 1326.

V. POINTS OF CONTACT.

ICE and NHDOC points of contact (POC) for purposes of this MOU are identified in Appendix A. POC designations can be updated at any time by providing a revised Appendix A to the other party to this MOU.

VI. OTHER PROVISIONS.

- A. Nothing in this MOU is intended to conflict with current law or regulation or the directives of DHS, ICE or NHDOC. If a term of this MOU is inconsistent with such

authority, then that particular term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

- B. This MOU shall not be construed to affect the existing procedure with regard to the identification of, and notification to ICE of alien inmates in the custody of the NHDOC who do not qualify for the Rapid REPAT program under this MOU and who are or may be subject to removal from the United States upon their release from incarceration.
- C. This MOU is an internal arrangement between ICE and NHDOC and does not create or confer any right or benefit on any other person or party, private or public.
- D. Each Party is responsible for any expenses it incurs as a result of activities under this MOU. Notwithstanding any language contained herein, nothing in this MOU is meant to imply that Congress or the State of New Hampshire will appropriate funds to conduct activities provided for under this MOU.
- E. Each Party is responsible for liability incurred by its own employees as a result of activities undertaken pursuant to the terms of this MOU. In the event either party is sued based in any part on activities undertaken pursuant to this MOU, such party is to notify the other party of the initiation of the suit as soon as practicable, but in any event, not later than 14 days after the party has notice of the filing of the lawsuit.
- F. Both parties may, at their discretion, communicate the substance of this MOU to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU. It is the practice of ICE to provide a copy of this MOU to requesting media outlets only after it has been signed; the NHDOC is authorized to do the same. The NHDOC hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOU, including any standard operating procedures developed for the implementation of this MOU. Information obtained or developed as a result of this MOU is under the control of ICE and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations, and executive orders. The State of New Hampshire hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOU, including any standard operating procedures developed for the implementation of this MOU. Insofar as any documents created by the NHDOC contain information developed or obtained as a result of this MOU, such documents shall not be considered public records. The release of statistical information regarding the Rapid REPAT program must be coordinated with the ICE Office of Public Affairs. The NHDOC hereby agrees to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOU. The points of contact for ICE and the NHDOC for this purpose are identified in Appendix B.

VII. EFFECTIVE DATE.

The terms of this MOU will become effective on the date on which the last of the below parties signs the MOU.

VIII. MODIFICATION.

Modifications to this MOA must be proposed in writing and approved and signed by the signatories.

IX. TERMINATION.

The terms of this MOU, will remain in effect from the date of signing until it is terminated by either party. Either party, upon written notice to the other party, may terminate the MOU at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect immediately upon receipt of such notice.

Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOU when resource constraints or competing priorities necessitate. Notice of termination or suspension by either party shall be given to the POC named in Appendix A.

By signing this MOU, each party represents it is fully authorized to enter into this MOU, accepts the terms, responsibilities, obligations, and limitations of this MOU, and agrees to be bound thereto to the fullest extent allowed by law.

APPROVED BY:

Field Office Director Dorothy Herrera-Niles
ICE, Detention and Removal Operations

Commissioner William Wrenn
New Hampshire Department of Corrections

Date: _____

Date: _____

APPENDIX A

POINTS OF CONTACT

The ICE and NHDOC points of contact for purposes of implementation of this MOU are:

FOR ICE:

Field Office Director Dorothy Herrera-Niles
Boston Field Office
10 New England Executive Park
Burlington, MA 01803
Phone Number: (781) 359-7514
Fax Number: (781) 221-3118

FOR NHDOC:

Commissioner William Wrenn
New Hampshire Department of Corrections
105 Pleasant Street, P.O. Box 1806
Concord, NH 03302-1806
Phone Number: (603) 271-5606
Fax Number: (603) 271-5643
E-mail: wwrenn@nhdoc.state.nh.us.

APPENDIX B

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section VI.F of this MOU, the signatories agree to coordinate appropriate release of information to the media regarding actions taken under this MOA before any information is released.

The points of contact for coordinating such activities are:

FOR ICE:
Public Affairs Officer Paula Grenier
ICE Public Affairs, New England
10 New England Executive Park
Burlington, MA 01803
Phone Number (781) 359-7523
E-mail: paula.grenier@dhs.gov

FOR NHDOC:
Public Information Officer Jeff Lyons
NH Department of Corrections
P.O. Box 1806
105 Pleasant Street
Concord, NH 03302
Phone Number (603) 271-5601
E-mail: jlyons@nhdoc.state.nh.us

NH RSA 651:25, VII
(as inserted by chapter 144:63 of HB2, 2009)

VII.(a) The commissioner of corrections may release a prisoner who is serving a New Hampshire state sentence to the custody and control of the United States Immigration and Customs Enforcement if all of the following requirements are satisfied:

(1) The department of corrections receives an order of deportation for the prisoner from the United States Immigration and Customs Enforcement;

(2) The prisoner has served at least 1/3 of the minimum sentences imposed by the court;

(3) The prisoner was not convicted of a violent crime, or any crime of obstruction of justice, or sentenced to an extended term of imprisonment under RSA 651:6; and

(4) The prisoner was not convicted of a sexual offense as defined in RSA 651-B:1, V.

(b) If a prisoner who is released from his or her state sentence pursuant to this section returns illegally to the United States, on notification from any federal or state law enforcement agency that the prisoner is in custody, the commissioner of corrections shall revoke the prisoner's release and immediately file a detainer seeking the prisoner's return to the custody of the department of corrections to serve the remainder of his or her sentence.

TITLE LXII
CRIMINAL CODE
CHAPTER 651
SENTENCES
General Provisions
Section 651:6

651:6 Extended Term of Imprisonment. –

I. A convicted person may be sentenced according to paragraph III if the jury also finds beyond a reasonable doubt that such person:

(a) Based on the circumstances for which he or she is to be sentenced, has knowingly devoted himself or herself to criminal activity as a major source of livelihood;

(b) Has been subjected to a court-ordered psychiatric examination on the basis of which the jury finds that such person is a serious danger to others due to a gravely abnormal mental condition;

(c) Has manifested exceptional cruelty or depravity in inflicting death or serious bodily injury on the victim of the crime;

(d) Has committed an offense involving the use of force against a person with the intention of taking advantage of the victim's age or physical disability;

(e) Has committed or attempted to commit any of the crimes defined in RSA 631 or 632-A against a person under 13 years of age;

(f) Was substantially motivated to commit the crime because of hostility towards the victim's religion, race, creed, sexual orientation as defined in RSA 21:49, national origin or sex;

(g) Has knowingly committed or attempted to commit any of the crimes defined in RSA 631 where he or she knows the victim was, at the time of the commission of the crime, a law enforcement officer, a paid firefighter, volunteer firefighter, on-call firefighter, or licensed emergency medical care provider as defined in RSA 153-A:2, V acting in the line of duty;

(h) Was an on-duty law enforcement officer at the time that he or she committed or attempted to commit any of the crimes defined in RSA 631;

(i) Has committed a crime listed in RSA 193-D:1 in a safe school zone under RSA 193-D;

(j) Possesses a radio device with the intent to use that device in the commission of robbery, burglary, theft, gambling, stalking, or a violation of any provision of RSA 318-B. In this section, the term "radio device" means any device capable of receiving a wireless transmission on any frequency allocated for law enforcement use, or any device capable of transmitting and receiving a wireless transmission;

(k) Has committed or attempted to commit negligent homicide as defined in RSA 630:3, I against a person under 13 years of age who was in the care of, or under the supervision of, the defendant at the time of the offense;

(l) Has committed or attempted to commit any of the crimes defined in RSA 637 or RSA 638 against a victim who is 65 years of age or older or who has a physical or mental disability and

that in perpetrating the crime, the defendant intended to take advantage of the victim's age or a physical or mental condition that impaired the victim's ability to manage his or her property or financial resources or to protect his or her rights or interests;

(m) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, I(l) or RSA 632-A:2, II where the defendant was 18 years of age or older at the time of the offense;

(n) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, III, and one or more of the acts comprising the pattern of sexual assault was an offense under RSA 632-A:2, I(l) or RSA 632-A:2, II, or both, and the defendant was 18 years of age or older when the pattern of sexual assault began;

[Paragraph I(o) effective until March 31, 2009; see also paragraph I(o) set out below.]

(o) Has purposely, knowingly, or recklessly with extreme indifference to the value of human life committed an act or acts constituting first degree assault as defined in RSA 631:1 against a person under 13 years of age where the serious bodily injury has resulted in brain damage or physical disability to the child that is likely to be permanent; or

[Paragraph I(o) effective March 31, 2009; see also paragraph I(o) set out above.]

(o) Has purposely, knowingly, or recklessly with extreme indifference to the value of human life committed an act or acts constituting first degree assault as defined in RSA 631:1 against a person under 13 years of age where the serious bodily injury has resulted in brain damage or physical disability to the child that is likely to be permanent;

[Paragraph I(p) effective until March 31, 2009; see also paragraph I(p) set out below.]

(p) Has committed murder as defined in RSA 630:1-b against a person under 13 years of age.

[Paragraph I(p) effective March 31, 2009; see also paragraph I(p) set out above.]

(p) Has committed murder as defined in RSA 630:1-b against a person under 13 years of age; or

[Paragraph I(q) effective March 31, 2009.]

(q) Has knowingly committed any of the following offenses as a criminal street gang member, or for the benefit of, at the direction of, or in association with any criminal street gang, with the purpose to promote, further, or assist in any such criminal conduct by criminal street gang members:

- (1) Violent crime as defined in RSA 651:5, XIII.
- (2) A crime involving the distribution, sale, or manufacture of a controlled drug under RSA 318-B:2.
- (3) Class A felony theft where the property stolen was a firearm.
- (4) Unlawful sale of a pistol or a revolver.
- (5) Witness tampering.
- (6) Criminal street gang solicitation as defined in RSA 644:20.

[Paragraph I-a effective until March 31, 2009; see also paragraph I-a set out below.]

I-a. As used in this section, a "law enforcement officer" is a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail, or corrections institution, a probation-parole officer, a juvenile probation and parole officer, or a conservation officer.

[Paragraph I-a effective March 31, 2009; see also paragraph I-a set out above.]

I-a. As used in this section:

(a) "Law enforcement officer" means a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail, or corrections institution, a probation-parole officer, a juvenile probation and parole officer, or a conservation officer.

(b) "Criminal street gang member" means an individual to whom 2 or more of the following apply:

- (1) Admits to criminal street gang membership;
- (2) Is identified as a criminal street gang member by a law enforcement officer, parent, guardian, or documented reliable informant;
- (3) Resides in or frequents a particular criminal street gang's area and adopts its style of dress, its use of hand or other signs, tattoos, or other physical markings, and associates with known criminal street gang members; or
- (4) Has been arrested more than once in the company of individuals who are identified as criminal street gang members by law enforcement, for offenses that are consistent with usual criminal street gang activity.

(c) "Criminal street gang" means a formal or informal ongoing organization, association, or group of 3 or more persons, which has as one of its primary objectives or activities the commission of criminal activity, whose members share a common name, identifying sign, symbol, physical marking, style of dress, or use of hand sign, and whose members individually or collectively have engaged in the commission, attempted commission, solicitation to commit, or conspiracy to commit 2 or more the following offenses, or a reasonably equivalent offense in another jurisdiction, on separate occasions within the preceding 3 years:

- (1) Violent crimes, as defined in RSA 651:5, XIII;
- (2) Distribution, sale, or manufacture of a controlled drug in violation of RSA 318-B:2;
- (3) Class A felony theft;
- (4) Unlawful sale of a pistol or revolver; or
- (5) Witness tampering.

II. A convicted person may be sentenced according to the terms of paragraph III if the court finds, and includes such findings in the record, that such person:

(a) Has twice previously been convicted in this state, or in another jurisdiction, on sentences in excess of one year;

(b) Has previously been convicted of a violation of RSA 630:3, II, RSA 265-A:3, I(b) or II(b), or any crime in any other jurisdiction involving driving or attempting to drive a motor vehicle under the influence of controlled drugs or intoxicating liquors, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b); or

(c) Has twice previously been convicted in this state or any other jurisdiction, for driving or attempting to drive a motor vehicle under the influence of intoxicating liquors or controlled drugs, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA

265-A:3, I(b) or II(b).

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

- (a) Any felony, other than murder or manslaughter, a minimum to be fixed by the court of not more than 10 years and a maximum to be fixed by the court of not more than 30 years;
- (b) A misdemeanor, a minimum to be fixed by the court of not more than 2 years and a maximum to be fixed by the court of not more than 5 years;
- (c) Manslaughter, a minimum to be fixed by the court of not more than 20 years and a maximum to be fixed by the court of not more than 40 years;
- (d) Murder, life imprisonment;
- (e) Two or more offenses under RSA 632-A:2, life imprisonment without parole;
- (f) A third offense under RSA 632-A:3, life imprisonment; or
- (g) Any of the crimes listed under RSA 651:6, I(j), a minimum to be fixed by the court of not less than 90 days and a maximum of not more than one year.

IV. If authorized by subparagraphs I(m), (n), or (o) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial:

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

- (1) Age of victim at time of offense.
- (2) Age of the defendant at the time of the offense.
- (3) Relationship between defendant and victim.
- (4) Injuries to victim.
- (5) Use of force, fear, threats, or coercion to the victim or another.
- (6) Length of time defendant offended against victim.
- (7) Number of times defendant offended against victim.
- (8) Number of other victims.
- (9) Acceptance of responsibility by defendant.
- (10) Defendant's criminal history.
- (11) Use of a weapon.
- (12) Medical or psychological condition of the victim at the time of the assault.

(b) The sentence shall also include, in addition to any other penalties provided by law, a special sentence of lifetime supervision by the department of corrections. The defendant shall comply with the conditions of lifetime supervision which are imposed by the court or the department of corrections. Violation of any of the conditions of lifetime supervision shall be deemed contempt of court. The special sentence of lifetime supervision shall begin upon the offender's release from incarceration, parole, or probation. A defendant who is sentenced to lifetime supervision pursuant to this paragraph shall not be eligible for release from the lifetime supervision pursuant to RSA 632-A:10-a, V(b).

(c) Any decision by the superior court under subparagraph (a) may be reviewed by the sentence review division of the superior court at the request of the defendant or at the request of the state pursuant to RSA 651:58.

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

VI. A person shall be sentenced according to the terms of paragraph VII if the court finds, and includes such findings in the record, that such person:

(a) (1) Committed a violation of RSA 632-A:2, I(1), RSA 632-A:2, II, or RSA 632-A:2, III, in which one or more of the acts comprising the pattern of sexual assault was an offense under RSA 632-A:2, I(1) or RSA 632-A:2, II, or both, after having previously been convicted of an offense in violation of one of the aforementioned offenses or any other statute prohibiting the same conduct in another state, territory or possession of the United States, and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release; or

(b) (1) Committed a violation of RSA 631:1 after having previously been convicted of an offense in violation of RSA 631:1, or any other statute prohibiting the same conduct in another state, territory or possession of the United States, if the earlier offense also involved a victim under 13 years of age where the serious bodily injury resulted in brain damage or physical disability to the child that is likely to be permanent; and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release; or

(c) (1) Committed a violation of RSA 630:1-b after having previously been convicted of an offense in violation of RSA 630:1-b, or any other statute prohibiting the same conduct in another state, territory, or possession of the United States; and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release.

VII. If the court has made the findings authorized by RSA 651:6, VI, and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person shall be sentenced to an extended term of imprisonment of life without parole.

Source. 1971, 518:1. 1973, 370:3. 1981, 511:1. 1985, 228:7, 8. 1990, 68:1; 140:2, XI. 1992, 3:1. 1994, 355:4. 1995, 131:1, 2. 1996, 198:1. 1997, 108:16. 1998, 301:1, 2. 1999, 296:2. 2003, 33:1. 2006, 89:1, 2; 197:1; 260:357; 327:177; 327:18, 20, eff. Jan. 1, 2007 at 12:01 a.m. 2007, 110:1, eff. June 11, 2007. 2008, 379:1, 2, eff. Mar. 31, 2009.

TITLE LXII
CRIMINAL CODE
CHAPTER 651-B
REGISTRATION OF CRIMINAL OFFENDERS
Section 651-B:1

651-B:1 Definitions. – In this chapter:

- I. "Department" means the department of safety.
- II. "Division" means the division of state police, department of safety.
- III. "Local law enforcement agency" means the chief of police in the city or town where the person resides or is temporarily domiciled, or, if the municipality has no police chief or if the person resides in an unincorporated place, the division.
- IV. "Sexual offender" means a person who is required to register for any sexual offense.
- V. "Sexual offense" means the following offenses where the victim was 18 years of age or older at the time of the offense:

(a) Capital murder, RSA 630:1, I(e); first degree murder, RSA 630:1-a, I(b)(1); aggravated felonious sexual assault, RSA 632-A:2; felonious sexual assault, 632-A:3; sexual assault, 632-A:4, I(a) or RSA 632-A:4, III; violation of privacy, RSA 644:9, I(a) or RSA 644:9, III-a; second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, I(a).

[Paragraph V(b) as amended by 2008, 323:9; see also paragraph V(b) as amended by 2008, 334:1 set out below.]

(b) RSA 169-B:41, II, 639:3, III, 649-A:3, 649-A:3-a, 649-A:3-b, 649-B:3, 649-B:4, or 650:2, II; or

[Paragraph V(b) as amended by 2008, 334:1; see also paragraph V(b) as amended by 2008, 323:9 set out above.]

(b) A law of another state, country, territory, tribal territory, or the federal government reasonably equivalent to a violation listed in subparagraph (a). For purposes of this section, the term "country" refers to Canada, Great Britain, Australia, and New Zealand, as well as any other country that the United States State Department has determined has an independent judiciary that generally enforces the right to a fair trial.

(c) Any offense for which the offender is required to register in the state where the conviction occurred.

(d) Any other criminal offense which is not specifically listed in subparagraph (a) if the court finds by clear and convincing evidence at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification and protection of the public would be furthered by requiring the person to register. In determining whether the offender should be required to register, the court may consider the offender's prior criminal history and any other relevant information. If the court determines that the offender should be required to register, the court shall determine whether the offender should be required

to register pursuant to the requirements of a tier I, tier II, or tier III offender. In determining in which tier the offender should register, the court shall consider the nature of other offenses that are currently listed in each tier; the extent to which public safety would be furthered; whether the victim was a minor when the offense occurred; and any other relevant factors. The hearing at which such a determination is made shall comply with due process requirements, including a right to appeal the finding. The court shall provide the defendant an opportunity to be heard on the issue prior to the imposition of the registration requirement and shall state on the record the reasons for its findings and the reasons for requiring registration.

Rapid REPAT Offender Consent Form

I _____ hereby consent and express my
(Offender's Name)

willingness to participate in the **REPAT** (Removal of Eligible Parolees Accepted for Transfer) program, as evidenced by my initials after each provision, and my signature below.

1. I understand that a final order of deportation has been issued against me by the immigration judge or other qualified entity. _____
2. With my continued cooperation, I will be transferred to the custody of ICE. _____
3. ICE will endeavor to secure travel documentation, which will permit my deportation to my country of citizenship. _____
4. If, through no fault of my own, ICE is unable to effect my deportation, I will be returned to the NH Department of Corrections (NHDOC) at the State's expense to continue with my incarceration. _____
5. If I am terminated from the Rapid REPAT due to my own lack of cooperation, I understand that I will be returned to the NHDOC to continue with my incarceration and I may be held financially responsible for some or all of the expenses incurred in effecting my return to the NHDOC. _____
6. I have been provided with written notice that reentry into the United States after deportation constitutes a Federal, criminal offense. _____
7. I agree to participate in Rapid REPAT knowingly and voluntarily. No other promises, rewards, inducements or threats have been made to me in exchange for my cooperation.

8. I waive any and all rights of extradition which would challenge my return to the NHDOC to complete the remainder of my sentence.

Offender's signature

Date

Witness

Date

Request for Rapid REPAT

Pursuant to the Memorandum of Understanding between Immigration and Customs Enforcement (ICE) and the New Hampshire Department of Corrections (NHDOC), the NHDOC requests that the offender (s) named below be accepted by ICE into the Rapid REPAT program.

Offender(s)' name(s) and date(s) of birth filled in here

Submitted on behalf of the NHDOC by: