

1 **New Hampshire Citizens Commission on State Courts**
2 **Draft Recommendations for Consideration March 13, March 20**

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5 **Recommendation # 25**

6 **Research Committee:** Sentencing

7
8 **Recommendation:**

9 Because effective sentencing practices requires a significant degree of
10 coordination and consultation between policy-makers, judges, prosecutors,
11 corrections officials, and others, the Court should establish a standing
12 committee comprised of persons with influence and diverse expertise, and
13 having as its charge the ongoing development, implementation, and
14 advocacy for a just and cost-effective sentencing strategy for the state.
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17 **Rationale:**

18 Taking account of both its membership and the outside experts whom
19 it consulted, the Sentencing Research Group heard from State legislators,
20 District and Superior Court judges, prosecutors, defense lawyers, police, and
21 county and state Corrections officials. Despite the great diversity of the
22 experiences and backgrounds of those persons, the Research Group
23 discovered that a substantial consensus exists throughout the relevant
24 professions both as to the nature of the challenges confronting New
25 Hampshire in the area of criminal sentencing, and as to the proper responses
26 to those challenges. The Group's other recommendations attempt to
27 describe that consensus. Given that persons knowledgeable about issues of
28 criminal sentencing in New Hampshire already substantially agree about the
29 direction of the best path forward into the future, the Research Group feels
30 that the most valuable step the Court could take in this area involves
31 establishing and supporting a forum in which information can be exchanged
32 and implementation strategies devised.

33 A committee of this kind used to meet, called the Interbranch
34 Commission on Criminal and Juvenile Justice. We recommend that such a
35 group be revived. Among its most important first tasks would be to invite
36 leading policy-makers from both political par q1 b q1 ties and from both
37 chambers of the legislature to a one-day information-sharing session. The
38 Group envisions that, at such a session, the extraordinary learning
39 experience shared by members of the Group could be reproduced for the

1 policy-makers whose participation is essential to the successful
 2 implementation of reforms such as those detailed in the recommendations
 3 below.

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 6 **Recommendation # 26**

7 **Research Committee:** Sentencing

8
 9 **Recommendation:**

10 New Hampshire should institute pretrial diversion and
 11 alternatives to incarceration.

12 **Rationale:**

13 Judges, prosecutors, defense attorneys, police, and corrections officials
 14 almost universally share the view that our current system of sentencing is
 15 neither cost effective nor provides crucial rehabilitative programs. Despite
 16 this common agreement, the state has been unable to address this issue in a
 17 meaningful way. The Sentencing Research Group believes that in
 18 appropriate cases, it is imperative to have alternatives to traditional
 19 sentencing available to allow each individual to address the issues that
 20 brought them in contact with the criminal justice system, and if possible, be
 21 educated and rehabilitated, ultimately reducing costs and future criminal
 22 behavior. This is particularly true with non-violent first offenders. Studies
 23 clearly establish that effective diversion programs reduce recidivism.

24
 25 Between 1981 and 2003, New Hampshire's prison population grew by 600
 26 percent. The Department of Corrections' operating budget rose from \$5
 27 million to \$79 million, making it the third fastest growing government
 28 function supported by the state's general fund.ⁱ The counties spent \$33
 29 million on jails and houses of correction. Only one percent was devoted to
 30 treatment. While spending on incarceration in FY 2001 totaled \$102
 31 million, spending on alternatives to incarceration totaled \$1.6 million.ⁱⁱ We
 32 spend millions of dollars to house offenders whose substance abuse issues
 33 contributed to their involvement in crime but fail to treat them while
 34 incarcerated and then release them on parole or probation with inadequate
 35 resources to provide effective supervision and treatment. With treatment as
 36 the priority, we would cut down on recidivism and ultimately, the cost of the
 37 criminal justice system.

38
 39 A percentage of those sentenced to prison need to be incarcerated for both
 40 punishment and protection of the community. However, a large percentage

1 of the incarcerated population is sentenced to jail because alternatives to
2 incarceration on a statewide basis do not exist. Although there are various
3 pretrial diversion programs and alternatives to incarceration throughout New
4 Hampshire, a consistent array of alternatives and sanctions is not available
5 statewide. Some of these alternatives are successful such as the Merrimack
6 County FAST Program and the programs instituted in Strafford County.
7 The Department of Corrections Academy program has been shown to
8 protect public safety and be cost effective when used instead of prison, but it
9 is not utilized in all counties.¹ Various correctional institutions have
10 utilized electronic monitoring with great success. This monitoring is not
11 available in other counties.

12

13 New Hampshire must design and institute comprehensive pretrial diversion
14 and alternative programs throughout the state. By doing this, we would
15 rehabilitate offenders, save money and reduce crime.

16

1 Richard A. Minard, Jr., *Locked Up: Corrections Policy in New Hampshire, Paper 2*, February 2004, and
Douglas Hall, *Six Program Fueled State Spending Increases, 1993-2003*, NH Center for Public Policy
Studies.² Katherine Merrow and Richard Minard, *Under the Influence, Alcohol, Drugs, Crime and
Treatment in New Hampshire*, NH Center for Public Policy Studies, July 2002.

1 **Recommendation # 27**

2 **Research Committee:** Sentencing

3
4 **Recommendation:**

5 In future years, in order to ensure that the judicial system in New Hampshire
6 can continue to protect public safety and rehabilitate offenders, the courts
7 must rely heavily on the Department of Corrections' field offices to provide
8 effective supervision of probationers and parolees, to continue to provide
9 timely information to the courts about noncompliant, or "slipping",
10 offenders so the courts can respond swiftly and individually to violators, to
11 anticipate an increase in the number of offenders under supervision, and to
12 ensure that a consistent and sophisticated philosophy regarding substance
13 abuse treatment informs the training and work of probation and parole field
14 officers.

15
16 **Rationale:**

17 One of the significant needs of the criminal justice system is for the Courts
18 to be able to rely on Department of Corrections Probation and Parole field
19 offices to closely and effectively monitor offenders in the community.
20 Probation officers are the people who ensure that offenders are compliant
21 with treatment programs, sentence obligations, curfews, conduct restrictions,
22 and other requirements. Currently, the men and women who staff the field
23 offices are people who render highly professional services. However, their
24 caseloads are uniformly too high for them to provide intense supervision of
25 every offender who could safely be placed on pretrial release in the
26 community or sentenced to adult probation. Also, many judges in the
27 District Courts are reluctant to place offenders on probation because the bulk
28 of the available resources of the Department of Corrections field offices is
29 devoted to supervising felony-level offenders. These factors limit the
30 sentencing options available to judges and affect the quality and level of
31 supervision available in our communities. In the future, if the Department of
32 Corrections can provide adequate staffing in the Probation and Parole field
33 offices to meet the anticipated demand for their services, and if those field
34 officers are able to benefit from training derived from a comprehensive
35 correctional approach to substance abuse treatment, then the criminal justice
36 system can provide more timely and better information to judges about the
37 conduct of offenders in the community and achieve better outcomes in terms
38 of community safety and offender supervision and rehabilitation.

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2 **Recommendation # 28**

3 **Research Committee: Sentencing**

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5 **Recommendation:**

6 New Hampshire needs to provide appropriate, timely, and adequate
7 treatment for substance abuse at all phases of the interface of individuals
8 with the criminal justice system, including pretrial, post-sentencing, and
9 incarceration.

10
11 **Rationale:**

12 Substance abuse is present in 75 to 85 percent of New Hampshire offenders
13 and is a contributing factor in a wide variety of crime. Alcohol and drug-
14 related crimes committed during 2001 alone will cost New Hampshire
15 approximately \$144 million. Although appropriate treatment reduces
16 alcohol and drug use and criminal behavior, it is often unavailable. Of an
17 estimated 12,700 offenders in need of substance abuse intervention during
18 2001, New Hampshire's publicly funded treatment system had the capacity
19 to serve only 4,700, leaving approximately 8,000 offenders with no
20 treatment unless they purchased it through the private market.^{1[1]}

21
22 Successful treatment of substance abuse is a major factor in reducing
23 recidivism. There is probably no more significant investment that we can
24 make to cut down crime, recidivism, and the expenses related to crime and
25 incarceration than to assure that appropriate substance abuse programs are
26 available at each stage of the criminal justice system, and that those who are
27 incarcerated can receive treatment in a timely fashion so as not to
28 unnecessarily prolong their incarceration.

29
30 New Hampshire is currently considering building a new secure prison
31 facility. We believe that the state would be better served by investing in the
32 establishment of a substance abuse program of excellence that addresses
33 needs present in all aspects of the criminal justice system, including a
34 residential treatment facility. That we currently do not have a substance
35 abuse program at the state prison, but rather an "education" program, is a
36 significant missed opportunity.

37
38 ^[1] Katherine Merrow and Richard Minard, *Under the Influence Part 1*, pp. 3 and 22, and *Under the*
39 *Influence Part 2*, p. 47, NH Center for Public Policy Studies, October 2002 and February 2003.

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2 **Recommendation #29**

3 **Research Committee:** Sentencing

4
5 **Recommendation:**

6 The Court should work to insure that women who are incarcerated in New
7 Hampshire are provided comparable conditions of confinement and equal
8 educational, vocational, treatment and rehabilitative opportunities as men.

9
10 **Rationale:**

11 Based upon testimony and evidence received by the Sentencing
12 Research Group, it is clear that women who are incarcerated in our state
13 have fewer educational and vocational programs, less treatment and
14 inadequate and inequitable rehabilitative services available to them than do
15 men similarly situated. Female state prison inmates are housed in a facility
16 which is widely viewed as inadequate. The population of women prisoners
17 at the New Hampshire State Prison grew from 23 in 1983 to 182 in 2003, an
18 increase of close to 700%. According to a study conducted by the New
19 Hampshire Commission on the Status of Women (Double Jeopardy:
20 December 2004), in 2000 the New Hampshire Department of Corrections
21 reported spending \$4,564 less annually per female inmate as compared with
22 male inmates at the New Hampshire State Prison for Men and \$1,906 less
23 annually compared to inmates at the Northern Correctional Facility at Berlin.
24 That study emphasized the significance of this finding because in
25 conversations with New Hampshire Department of Corrections
26 administrators and staff as well as state legislators, they came to understand
27 that women are more expensive than men to incarcerate, largely due to
28 increased medical costs and the need for more intensive therapy
29 interventions.

30 The facility has no on-site medical unit, is out of compliance for ACA
31 accreditation standards for cell space, lacks adequate space for appropriate
32 therapeutic rehabilitative training and educational programs and lacks
33 adequate accommodations for attorney and family visits. As the
34 Commission on the Status of Women found, the large majority of female
35 inmates are low risk, non-violent offenders. They occupy expensive prison
36 space better reserved to violent offenders who pose a clear and present
37 danger to public safety. Additionally, without effective rehabilitation,
38 inmates released into the community present the same risk as before their
39 incarceration maintain the same motivations - addiction, mental illness,
40 poverty - to commit crime again.

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3 **Recommendation #30**4 **Research Committee:** Sentencing

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6 **Recommendation:**

7 New Hampshire needs to provide adequate space in its sex offender
8 treatment program so that offenders need not extend their incarceration
9 merely to complete a requirement of their sentencing that cannot be provided
10 during their requisite term due to capacity issues.

11 **Rationale:**

12 Presently many inmates are incarcerated beyond their required terms only
13 because they cannot gain admission to their court-ordered sexual offender
14 treatment program merely because of capacity issues. Currently, there are
15 currently approximately 300 inmates on the waiting list unable to enter the
16 program in time for completion in time for their parole eligibility
17 date. Hence taxpayers and the prison system end up spending more money
18 on incarceration than they would by expanding the treatment program to
19 match need. Asking judges to stop making such treatment part of their
20 sentencing as way of dealing with the capacity issues is not the answer, but
21 neither is asking taxpayers to pay more money for extending incarceration
22 merely because of a capacity issue.

23

1 Richard A. Minard, Jr., *Locked Up: Corrections Policy in New Hampshire, Paper 2*, February 2004, and Douglas Hall, *Six Program Fueled State Spending Increases, 1993-2003*, NH Center for Public Policy Studies.

2Katherine Merrow and Richard Minard, *Under the Influence, Alcohol, Drugs, Crime and Treatment in New Hampshire*, NH Center for Public Policy Studies, July 2002.