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AG's appeal of Evans sentence is most recent to tap new law

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DOVER — Prior to Jan. 1, prosecutors had no option but to accept a sentence they felt was too lenient.

But prosecutors are flexing their muscles under a new New Hampshire law, which allows them to appeal the sentence handed down by a judge. Previously, only defendants had that ability.

Two local cases, in Rochester and North Hampton, have been appealed under the new law.

On Friday, the attorney general's office filed a request for sentence review in the case of Chad E. Evans, 30, of Rochester. He was convicted of second-degree murder and multiple counts of assault in connection with the beating death of 21-month-old Cassidy Bortner — his girlfriend's daughter.

The attorney general's office disagreed with Evans' sentence of 28 years to life in prison, which was handed down last Tuesday by Strafford County Superior Court Judge Tina Nadeau.

At the sentencing hearing, prosecutors had recommended 60 years to life, while a pre-sentence investigation by the Department of Corrections recommended 45 years to life.

Senior Assistant Attorney General N. William Delker explained that the sentence will now be reviewed by a panel of three superior court judges. They can increase, decrease or maintain the length of the sentence ordered by Nadeau. The law allows appeals of any sentence that is for one year or more in state prison.

Evans' defense attorneys, Mark Sisti and Alan Cronheim, could not be reached for comment this morning.

Sen. Burt Cohen, D-New Castle, was the primary sponsor of the bill that gave prosecutors the ability to appeal sentences. He believes the Evans case is a good example of why it was needed.

"If it ever was appropriate, this is appropriate," Cohen said Monday. "This was certainly the intent of the bill. It's good to see the results of my efforts making a difference."

Cohen worked with Rockingham County Attorney Jim Reams to draft the bill. Earlier last week, Reams used the law to appeal the sentence of Michael D. Rice, 42, of 39 Lafayette Road, North Hampton. Rice was arrested last March after police had seized more than 500 pornographic photos of nude children, ranging in age from infancy to midteens, engaged in various sexual acts, as well as pornographic movies, CD-ROMS, computer disks, and magazines, according to court affidavits.

Rice had been sentenced to one year in jail for 28 counts of possessing child pornography. As a condition of his sentence, Rice was prohibited by Judge Philip Hollman to have any future contact with minors and undergo psychological counseling as recommended by the probation department. He was also given five years probation.

At the time of his sentencing, Reams had recommended 12 to 24 years in prison. Reams called the one-year sentence "absurd and inappropriate."

Rice's defense attorney Phil Desfosses, could not be reached for comment this morning.

According to Holly Aquizap, clerk of the sentence review division, only one other sentence is facing such an appeal by prosecutors. It involves a second-degree assault charge out of Hillsborough County.

In an interview Monday, Reams said the intent of sentence review is to prevent "wide swings" from county to county. But he felt it was unfair because defendants would only appeal when they felt the sentence was too high. No sentences were being appealed for being too lenient.

"If the defendant has that right [for sentence review], why doesn't the state have that right?" Reams said.

Reams testified in support of Cohen's bill while it was in the Legislature. He said there are some states that have similar laws, including Pennsylvania, and the U.S. Supreme Court recently affirmed the right of prosecutors to seek sentence review in federal cases.

Portsmouth Bureau Chief James Baker contributed to this report.

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