

HB 1349-FN - AS INTRODUCED

2022 SESSION

22-2618

04/08

HOUSE BILL ***1349-FN***

AN ACT decriminalizing the possession and use of psilocybin mushrooms.

SPONSORS: Rep. Labranche, Hills. 22; Rep. Laughton, Hills. 31; Rep. Abramson, Rock. 37;
Rep. Verville, Rock. 2; Rep. Hyland, Hills. 38; Rep. Kenney, Straf. 6

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill decriminalizes the possession or use of a certain amount or psilocybin mushrooms by a person 18 years of age or older.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Two Thousand Twenty Two

AN ACT decriminalizing the possession and use of psilocybin mushrooms.

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

1 1 Delinquent Children; Definitions. Amend RSA 169-B:2, IV to read as follows:

2 IV. "Delinquent" means a person who has committed an offense before reaching the age of
3 18 years which would be a felony or misdemeanor under the criminal code of this state if committed
4 by an adult, or which is a violation of RSA 318-B:2-c, II or III, **or RSA 318-B:2-f**, and is expressly
5 found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.
6 No person under 13 years of age shall be subject to proceedings under this chapter unless such
7 person has committed a violent crime as defined in RSA 169-B:35-a, I(c). This provision shall not be
8 construed to limit the filing of a petition for any minor child under RSA 169-D.

9 2 Motor Vehicles; Alcohol or Drug Impairment; Psilocybin Mushrooms. Amend RSA 265-A:43 to
10 read as follows:

11 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly
12 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug
13 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her
14 license shall be revoked or his or her right to drive denied for a period of 60 days and at the
15 discretion of the court for a period not to exceed 2 years. This section shall not apply to the
16 possession of marijuana or hashish as provided in RSA 318-B:2-c, or a personal-use amount of a
17 regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b), **or possession or use of**
18 **psilocybin mushrooms as provided in RSA 318-B:2-f**.

19 3 New Section; Controlled Drug Act; Psilocybin Mushrooms. Amend RSA 318-B by inserting
20 after section 2-e the following new section:

21 318-B:2-f Psilocybin Mushrooms.

22 I. In this section: "psilocybin mushroom" means a fungus, such as genus *Psilocybe*,
23 containing hallucinogenic alkaloids such as psilocybin.

24 II. Any person under 18 years of age who knowingly possesses 12 grams or less of psilocybin
25 mushrooms shall be guilty of a violation, and subject to the penalties provided in paragraph IV(b).

26 III. Any person 18 years of age or older who knowingly possesses 12 grams or less of
27 psilocybin mushrooms shall be guilty of a violation, and subject to the penalties provided in
28 paragraph IV(a).

29 IV.(a) Except as provided in this paragraph, any person 18 years of age or older who is
30 convicted of violating paragraph III shall be subject to a fine of \$100 for a first or second offense

1 under this paragraph, or a fine of up to \$300 for any subsequent offense. A court shall waive the fine
2 for a single conviction within a 3-year period upon proof that person has completed a substance
3 abuse assessment by a licensed drug and alcohol counselor within 60 days of the conviction. A
4 person who intends to seek an assessment in lieu of the fine shall notify the court, which shall
5 schedule the matter for review after 180 days. Should proof of completion of an assessment be filed
6 by or before that time, the court shall vacate the fine without a hearing unless requested by a party.

7 (b) Any person under 18 years of age who is convicted of violating paragraph II shall
8 forfeit the psilocybin mushrooms to the state and shall be subject to a delinquency petition under
9 RSA 169-B:6.

10 V.(a) Except as provided in this section, no person shall be subject to arrest for a violation of
11 this section and shall be released provided the law enforcement officer does not have lawful grounds
12 for arrest for a different offense.

13 (b) Nothing in this section shall be construed to prohibit a law enforcement agency from
14 investigating or charging a person for a violation of RSA 265-A.

15 (c) Nothing in this section shall be construed to prohibit any police officer from taking
16 into custody any minor who is found violating this section.

17 (d) Any person in possession of an identification card, license, or other form of
18 identification issued by the state or any state, country, city, or town, or any college or university,
19 who fails to produce the same upon request of a police officer or who refuses to truthfully provide his
20 or her name, address, and date of birth to a police officer who has informed the person that he or she
21 has been found to be in possession of what appears to the officer to be 12 grams or less of psilocybin
22 mushrooms may be arrested for a violation of this section.

23 VI. All fines imposed pursuant to this section shall be deposited into the alcohol abuse
24 prevention and treatment fund established in RSA 176-A:1 and utilized for evidence-informed
25 substance abuse prevention programs.

26 VII.(a) No record that includes personally identifiable information resulting from a violation
27 of this section shall be made accessible to the public, federal agencies, or agencies from other states
28 or countries.

29 (b) Every state, county, or local law enforcement agency that collects and reports data
30 for the Federal Bureau of Investigation Uniform Crime Reporting Program shall collect data on the
31 number of violations of this section. The data collected pursuant to this paragraph shall be available
32 to the public. A law enforcement agency may update the data annually and may make this data
33 available on the agency's public Internet website.

34 4 Controlled Drug Act; Plea by Mail. Amend RSA 318-B:2-d to read as follows:

35 318-B:2-d Plea by Mail.

1 I. Any person 18 years of age or older who is charged with a violation of RSA 318-B:2-c, ~~II,~~
2 ~~III, or IV~~ **II-IV or RSA 318-B:2-f** may enter a plea of guilty, nolo contendere, or not guilty, by mail
3 in a circuit court, district division.

4 II. Such defendant shall receive, in addition to the summons, a fine notice entitled "Notice of
5 Fine" which shall contain the amount of the fine for a violation of RSA 318-B:2-c, ~~II, III, or IV~~ **II-IV**
6 **or RSA 318-B:2-f**. A defendant who is issued a summons and notice of fine and who wishes to plead
7 guilty or nolo contendere shall enter his or her plea on the summons and return it with payment of
8 the fine within 30 days of the date of the summons. Payment by credit card may be accepted in lieu
9 of cash payment.

10 III. If the defendant wishes to enter a plea of not guilty, he or she shall enter such plea on
11 the summons and return it within 30 days of the date of the summons. The circuit court, district
12 division shall schedule a trial.

13 IV. Whenever a defendant willfully fails to pay a fine in connection with a conviction for a
14 violation of RSA 318-B:2-c, ~~II, III, or IV~~ **II-IV or RSA 318-B:2-f** or payment of such fine cannot be
15 collected, the defendant shall be defaulted and the court may impose an additional fine of \$100.

16 5 New Paragraph; Controlled Drug Act; Penalties; Psilocybin Mushrooms. Amend RSA 318-
17 B:26, II by inserting after paragraph (e) the following new paragraph:

18 (f) In the case of 12 grams or less of psilocybin mushrooms, the person shall be guilty of
19 a violation pursuant to RSA 318-B:2-f.

20 6 Controlled Drug Act; Penalties. Amend RSA 318-B:26, III(a) to read as follows:

21 (a) Except as provided in RSA 318-B:2-c **or RSA 318-B:2-f**, controls any premises or
22 vehicle where he or she knows a controlled drug or its analog is illegally kept or deposited;

23 7 Controlled Drug Act; Penalties. Amend RSA 318-B:26, XIII to read as follows:

24 XIII. Any person who violates any provision of this chapter shall be fined a minimum of
25 \$350 for a first offense and \$500 for a second or subsequent offense, except that any person who
26 violates the provisions of RSA 318-B:26, II(c) or RSA 318-B:26, II(d) shall be fined \$350. This
27 paragraph shall not apply to violations of RSA 318-B:2-c **or RSA 318-B:2-f**.

28 8 Controlled Drug Act; Prior Offenses. Amend RSA 318-B:27 to read as follows:

29 318-B:27 Prior Offenses. In the case of any person charged with a violation of any provision of
30 this chapter or RSA 318-D, who has previously been convicted of a misdemeanor or felony level
31 violation of the laws of the United States or any state, territory or the District of Columbia relating
32 to controlled drugs as defined in this chapter, such previous conviction shall be deemed a prior
33 offense. A prior conviction for a violation level offense shall not be deemed a prior offense, except as
34 provided in RSA 318-B:2-c, V(a) **or RSA 318-B:2-f**.

35 9 Effective Date. This act shall take effect 60 days after its passage.

**HB 1349-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT decriminalizing the possession and use of psilocybin mushrooms.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Alcohol Abuse Prevention and Treatment Fund & Plea by Mail Revenue			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges or how many fewer charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.

Department of Corrections	FY 2022	FY 2023
FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

It is assumed that any fiscal impact would occur after FY 2022.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties