

HB 615-FN - AS AMENDED BY THE HOUSE

24Feb2021... 0124h

2021 SESSION

21-0189

04/06

HOUSE BILL            **615-FN**

AN ACT                reducing the penalty for certain first offense drug possession charges.

SPONSORS:            Rep. Seaworth, Merr. 20; Rep. Verville, Rock. 2; Rep. Potucek, Rock. 6; Rep. Conley, Straf. 13; Rep. Roy, Rock. 32; Sen. Reagan, Dist 17

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill reduces the penalty for certain first offense drug offenses.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT reducing the penalty for certain first offense drug possession charges.

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

1 1 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I to read as follows:

2 I. Any person who manufactures, sells, prescribes, administers, or transports or possesses  
3 with intent to sell, dispense, or compound any controlled drug, controlled drug analog or any  
4 preparation containing a controlled drug, except as authorized in this chapter; or manufactures,  
5 sells, or transports or possesses with intent to sell, dispense, compound, package or repackage (1)  
6 any substance which he *or she* represents to be a controlled drug, or controlled drug analog, or (2)  
7 any preparation containing a substance which he *or she* represents to be a controlled drug, or  
8 controlled drug analog, shall be sentenced as follows, except as otherwise provided in this section:

9 (a) In the case of a violation involving any of the following, a person shall be sentenced  
10 to a maximum term of imprisonment of not more than ~~[30]~~ **20** years, a fine of not more than  
11 ~~[\$500,000]~~ **\$300,000**, or both. If any person commits such a violation after one or more prior offenses  
12 as defined in RSA 318-B:27, such person may be sentenced to a maximum term of life imprisonment,  
13 a fine of not more than ~~[\$500,000]~~ **\$350,000**, or both:

14 (1) Five ounces or more of a mixture or substance containing any of the following,  
15 including any adulterants or dilutants:

16 (A) Coca leaves, except coca leaves and extracts of coca leaves from which  
17 cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; or

18 (B) Cocaine other than crack cocaine, its salts, optical and geometric isomers,  
19 and salts of isomers; or

20 (C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

21 (2) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more  
22 including any adulterants or dilutants, or phencyclidine (PCP), or its analog, in a quantity of 10  
23 grams or more including any adulterants or dilutants.

24 (3) Heroin or its analog~~[s]~~ **or** crack cocaine, ~~[or a fentanyl class drug]~~ in a quantity of  
25 5 grams or more, including any adulterants or dilutants.

26 (4) Methamphetamine or its analog, in a quantity of 5 ounces or more, including  
27 adulterants or dilutants.

28 (5) ***A fentanyl class drug in a quantity of .5 gram, or more, including any***  
29 ***adulterants or dilutants.***

30 (b) In the case of a violation involving any of the following, a person may be sentenced to  
31 a maximum term of imprisonment of not more than ~~[20]~~ **15** years, a fine of not more than ~~[\$300,000]~~

1 **\$100,000**, or both. If any person commits such a violation after one or more prior offenses as defined  
2 in RSA 318-B:27, such person may be sentenced to a term of imprisonment of not more than [40] **30**  
3 years, a fine of not more than [~~\$500,000~~] **\$150,000**, or both:

4 (1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other  
5 than crack cocaine, in a quantity of 1/2 ounce or more, including any adulterants or dilutants;

6 (2) A substance classified in schedule I or II other than those specifically covered in  
7 this section, or the analog of any such substance, in a quantity of one ounce or more including any  
8 adulterants or dilutants;

9 (3) Lysergic acid diethylamide, or its analog, in a quantity of less than 100  
10 milligrams including any adulterants or dilutants, or where the amount is undetermined, or  
11 phencyclidine (PCP) or its analog, in a quantity of less than 10 grams, including any adulterants or  
12 dilutants, or where the amount is undetermined;

13 (4) Heroin or its analog<sup>[7]</sup> **or** crack cocaine, [~~or a fentanyl class drug~~] in a quantity of  
14 one gram or more, including any adulterants or dilutants;

15 (5) Methamphetamine or its analog, in a quantity of one ounce or more including any  
16 adulterants or dilutants;

17 (6) Marijuana in a quantity of 5 pounds or more including any adulterants or  
18 dilutants, or hashish in a quantity of one pound or more including any adulterants and dilutants;

19 (7) Flunitrazepam in a quantity of 500 milligrams or more;

20 (8) ***A fentanyl class drug in a quantity of .25 gram or more, including any***  
21 ***adulterants or dilutants.***

22 (c) In the case of a violation involving any of the following, a person may be sentenced to  
23 a maximum term of imprisonment of not more than [7] **5** years, a fine of not more than [~~\$100,000~~]  
24 **\$50,000**, or both. If any person commits such a violation after one or more prior offenses as defined  
25 in RSA 318-B:27, such person may be sentenced to a maximum term of imprisonment of not more  
26 than [15] **10** years, a fine of not more than [~~\$200,000~~] **\$100,000**, or both:

27 (1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other  
28 than crack cocaine, in a quantity less than 1/2 ounce including any adulterants or dilutants;

29 (2) A substance or mixture classified as a narcotic drug in schedule I or II other than  
30 those specifically covered in this section, or the analog of any such substance, in a quantity of less  
31 than one ounce including any adulterants or dilutants;

32 (3) Methamphetamine, or its analog in a quantity of less than one ounce including  
33 any adulterants or dilutants;

34 (4) Heroin or its analog<sup>[7]</sup> **or** crack cocaine, [~~or a fentanyl class drug~~] in a quantity of  
35 less than one gram, including any adulterants or dilutants;

36 (5) Marijuana in a quantity of one ounce or more including any adulterants or  
37 dilutants, or hashish in a quantity of 5 grams or more including any adulterants or dilutants;

1 (6) Flunitrazepam in a quantity of less than 500 milligrams;

2 (7) Any other controlled drug or its analog, other than those specifically covered in  
3 this section, classified in schedules I, II, III or IV;

4 (8) *A fentanyl class drug in a quantity of less than .25 gram, including any*  
5 *adulterants or dilutants.*

6 (d) In the case of a violation involving any of the following, a person may be sentenced to  
7 a maximum term of imprisonment of not more than 3 years, a fine of not more than [~~\$25,000~~  
8 **\$15,000**, or both. If any person commits such a violation after one or more prior offenses as defined  
9 in RSA 318-B:27, such person may be sentenced to a maximum term of imprisonment of not more  
10 than [6] **5** years, a fine of not more than [~~\$50,000~~] **\$30,000**, or both:

11 (1) Marijuana in a quantity of less than one ounce including any adulterants or  
12 dilutants, or hashish in a quantity of less than 5 grams including any adulterants or dilutants;

13 (2) Any schedule V substance or its analog.

14 2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(a) to read as follows:

15 (a) [~~In the case of a controlled drug or its analog, classified in schedules I, II, III, or IV,~~  
16 ~~other than those specifically covered in this section, the person shall be guilty of a class B felony,~~  
17 ~~except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may~~  
18 ~~be imposed. If any person commits such a violation after one or more prior offenses as defined in~~  
19 ~~RSA 318-B:27, such person shall be guilty of a class A felony, except that notwithstanding the~~  
20 ~~provisions of RSA 651:2, IV(a), a fine of up to \$50,000 may be imposed.] *In the case of a*  
21 *controlled drug or its analog, other than those specifically covered in this section, the*  
22 *person shall be guilty of a misdemeanor, except that any person who commits any such*  
23 *violation after one or more prior offenses as defined in RSA 318-B:27 may be charged with a*  
24 *class B felony or a misdemeanor at the discretion of the prosecuting authority.*~~

25 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, V-VIII to read as follows:

26 V. Any person who violates this chapter by manufacturing, selling, prescribing,  
27 administering, dispensing, or possessing with intent to sell, dispense, or compound any controlled  
28 drug or its analog, in or on or within 1,000 feet of the real property comprising a public or private  
29 elementary, secondary, or secondary vocational-technical school, may be sentenced to a term of  
30 imprisonment or fine, or both, up to twice that otherwise authorized by this section. [~~Except to the~~  
31 ~~extent a greater minimum sentence is otherwise provided by this chapter, a sentence imposed under~~  
32 ~~this paragraph shall include a mandatory minimum term of imprisonment of not less than one year.~~  
33 ~~Neither the whole nor any part of the mandatory minimum sentence imposed under this paragraph~~  
34 ~~shall be suspended or reduced.]~~

35 VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318-B:2,  
36 XII as a drug enterprise leader [~~shall~~] *may* be sentenced to [~~a mandatory minimum term of not less~~  
37 ~~than 25 years and may be sentenced to~~] *an extended term of imprisonment which may include*

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1 a maximum term of not more than life imprisonment. The court may also impose a fine not to  
2 exceed \$500,000 or 5 times the street value of the controlled drug or controlled drug analog involved,  
3 whichever is greater. ~~[Upon conviction, the court shall impose the mandatory sentence unless the~~  
4 ~~defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the~~  
5 ~~defendant and the state have entered into a post conviction agreement which provides for a lesser~~  
6 ~~sentence. The negotiated plea or post conviction agreement may provide for a specified term of~~  
7 ~~imprisonment within the range of ordinary or extended sentences authorized by law, a specified fine,~~  
8 ~~or other disposition. In that event, the court at sentencing shall not impose a lesser term of~~  
9 ~~imprisonment or fine than that expressly provided for under the terms of the plea or post conviction~~  
10 ~~agreement.]~~

11 VII. Any person who violates RSA 318-B:2, XI may be sentenced to a maximum term of  
12 imprisonment of not more than ~~[20]~~ **15** years, a fine of not more than ~~[\$300,000]~~ **\$150,000**, or both.  
13 If any person commits such a violation after one or more prior offenses, as defined in RSA 318-B:27,  
14 such person may be sentenced to a term of imprisonment of not more than ~~[40]~~ **30** years, a fine of not  
15 more than \$500,000, or both.

16 VIII. Any person who knowingly or purposely obtains or purchases (1) any substance which  
17 he *or she* represents to be a controlled drug or controlled drug analog, or (2) any preparation  
18 containing a substance which he *or she* represents to be a controlled drug or controlled drug analog,  
19 except as authorized in this chapter, shall be guilty of a misdemeanor. If any person commits such a  
20 violation after one or more prior offenses as defined in RSA 318-B:27, such person shall be guilty of a  
21 class B felony.

22 4 Repeal. RSA 318-B:26, II(b), relative to maximum sentences for certain drug violations, is  
23 repealed.

24 5 Effective Date. This act shall take effect January 1, 2022.

**HB 615-FN- FISCAL NOTE**  
 AS AMENDED BY THE HOUSE (AMENDMENT #2021-0124h)

AN ACT reducing the penalty for certain first offense drug possession charges.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

**METHODOLOGY:**

This bill reduces the penalty for certain first offense drug offenses. The Judicial Branch provided the following analysis of the bill:

- By converting the crime from a felony to a misdemeanor, the cases would be tried in the Circuit Court unless a transfer to Superior Court is granted. Defendants convicted of a Class A misdemeanor in Circuit Court are entitled to a de novo jury trial in the Superior Court.
- Given the fines and penalty assessments collected in 2019 and 2020, it is not expected that the proposed change in fines would substantively impact revenues.
- If the bill becomes law, it will burden Circuit Court resources with the shift in cases from felonies tried in the Superior Court to misdemeanors tried in the Circuit Court, but will remove some of those cases from the Superior Court. It is not known how many of Class A misdemeanor convictions in the Circuit Court would be tried de novo in the Superior Court following a conviction in Circuit Court.
- The cost per misdemeanor case in Circuit Court is generally less than the cost per felony case in the Superior Court. The data on costs for routine criminal cases available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times that are more than fifteen years old so the data does not have current validity. The

Judicial Branch received authority to update this cost data in 2020, but due to the COVID state of emergency, the Branch has been unable to complete that analysis.

- The Branch is unable to determine the fiscal impact of lowering the maximum fines on cases subject to sentencing under RSA 318-B:26, I, VII or VIII.

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 would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted below have provided the potential costs associated with these penalties below.

Judicial Council		
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. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

The Department of Justice would not necessarily be involved in the prosecution of such offenses, the majority of which would be handled by municipal prosecutors and the county attorneys. Appeals from any convictions from any such offenses would be handled by the Criminal Justice Bureau and could be done within the current budget. To the extent the Department of Justice is involved with the prosecution of such offenses, the Department does not anticipate any financial impact. The Attorney General’s Drug Task Force investigates street-level crimes that sometimes

involve the sale and possession of controlled drugs, including marijuana. If this bill were to pass, the task force's efforts may be redirected. The Department does not anticipate savings to the task force would result from this bill.

**AGENCIES CONTACTED:**

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