

HB 1232-FN - AS INTRODUCED

2022 SESSION

22-2423

04/05

HOUSE BILL

1232-FN

AN ACT reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

SPONSORS: Rep. Warden, Hills. 15

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill reduces the penalties and removes mandatory minimum sentences for certain first offense drug offenses.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

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

1 1 Controlled Drug Act; Penalties. RSA 318-B:26, II(a) is repealed and reenacted to read as
2 follows:

3 (a) In the case of a controlled drug or its analog, other than those specifically covered in
4 this section, the person shall be guilty of a misdemeanor, except that any person who commits any
5 such violation after one or more prior offenses as defined in RSA 318-B:27 shall be sentenced to a
6 class B felony or a misdemeanor, at the discretion of the sentencing court.

7 2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, V-VI to read as follows:

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

17 VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318-B:2,
18 XII as a drug enterprise leader ~~[shall]~~ **may** be sentenced to ~~[a mandatory minimum term of not less~~
19 ~~than 25 years and may be sentenced to]~~ **an extended term of imprisonment which may include**
20 a maximum term of not more than life imprisonment. The court may also impose a fine not to
21 exceed \$500,000 or 5 times the street value of the controlled drug or controlled drug analog involved,
22 whichever is greater. ~~[Upon conviction, the court shall impose the mandatory sentence unless the~~
23 ~~defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the~~
24 ~~defendant and the state have entered into a post-conviction agreement which provides for a lesser~~
25 ~~sentence. The negotiated plea or post-conviction agreement may provide for a specified term of~~
26 ~~imprisonment within the range of ordinary or extended sentences authorized by law, a specified fine,~~
27 ~~or other disposition. In that event, the court at sentencing shall not impose a lesser term of~~
28 ~~imprisonment or fine than that expressly provided for under the terms of the plea or post-conviction~~
29 ~~agreement.]~~

HB 1232-FN - AS INTRODUCED

- Page 2 -

- 1 3 Repeal. RSA 318-B:26, II(b), relative to penalties for schedule V controlled drugs or their
- 2 analog, is repealed.
- 3 4 Effective Date. This act shall take effect January 1, 2023.

HB 1232-FN- FISCAL NOTE
AS INTRODUCED

AN ACT reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

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	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

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

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 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

The Judicial Council states this bill would reduce first-time possession, transportation or use of certain controlled drugs from a class B felony to an unclassified misdemeanor. Subsequent violations could be sentenced as class B felonies or an unclassified misdemeanor at the discretion of the prosecutor. The bill also eliminates mandatory minimums for school zone and drug enterprise leader charges. The Council indicates the bill has the potential for a significant impact on indigent defense costs. Unclassified misdemeanors can be charged as class A misdemeanors if the prosecution submits requisite notice. Because the indigent defense delivery system does not provide representation to defendants charged with class B misdemeanors, first-time possession charges that are brought as class B misdemeanors would no longer require legal representation. The Public Defender program opens an average of 1,100 to 1,400 straight possession cases each year. It is not possible to determine what percentage of these cases would be charged as class B misdemeanors under the new law. The Council assumes that any indigent defendant charged with a class A misdemeanor would be entitled to court appointed counsel. However, these charges would be less time-consuming and less costly than the class B felonies currently brought for possession crimes. Because of the high-stakes involved in mandatory minimum sentences, such charges have historically required more attorney time to defend. The Council states, while elimination of these mandatory minimums would not impact the number of cases charged, it could reduce the amount of attorney time currently needed to defend against these allegations.

The Judicial Branch indicates the overall fiscal impact on the Branch is indeterminable. If the bill becomes law, it will burden Circuit Court resources with a 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. 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.

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.

AGENCIES CONTACTED:

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