

HB 1306-FN - AS INTRODUCED

2022 SESSION

22-2607

04/11

HOUSE BILL ***1306-FN***

AN ACT relative to personal possession of marijuana.

SPONSORS: Rep. Labranche, Hills. 22; Rep. Laughton, Hills. 31; Rep. Hyland, Hills. 38; Rep. Abramson, Rock. 37

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill amends the provisions relating to personal possession of marijuana.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 relative to personal possession of marijuana.

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

1 1 Controlled Drug Act; Personal Possession of Marijuana. Amend RSA 318-B:2-c to read as
2 follows:

3 318-B:2-c Personal Possession of Marijuana.

4 I. In this section:

5 (a) "Marijuana" includes the leaves, stems, flowers, and seeds of all species of the plant
6 genus cannabis, but shall not include the resin extracted from any part of such plant and every
7 compound, manufacture, salt, derivative, mixture, or preparation from such resin including hashish,
8 and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or
9 cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture,
10 or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of such plant which is
11 incapable of germination. Marijuana shall not include hemp grown, processed, marketed, or sold
12 under RSA 439-A.

13 (b) "Personal-use amount of a regulated marijuana-infused product" means one or more
14 products that is comprised of marijuana, marijuana extracts, or resins and other ingredients and is
15 intended for use or consumption, such as, but not limited to, edible products, ointments, and
16 tinctures, which was obtained from a state where marijuana sales to adults are legal and regulated
17 under state law, and which is in its original, child-resistant, labeled packaging when it is being
18 stored, and which contains a total of no more than 300 milligrams of tetrahydrocannabinol.

19 II. Except as provided in RSA 126-X, any person who knowingly possesses ~~[3/4 of an]~~ **one**
20 ounce or less of marijuana, including adulterants or dilutants, shall be guilty of a violation, and
21 subject to the penalties provided in paragraph V.

22 III. Except as provided in RSA 126-X, any person who knowingly possesses 5 grams or less
23 of hashish, including adulterants or dilutants, shall be guilty of a violation, and subject to the
24 penalties provided in paragraph V.

25 IV. Except as provided in RSA 126-X, any person ~~[21]~~ **18** years of age or older possessing a
26 personal-use amount of a regulated marijuana-infused product shall be guilty of a violation, and
27 subject to the penalties provided in paragraph V. ~~[Persons 18 years of age or older and under 21~~
28 ~~years of age who knowingly possess marijuana infused products shall be guilty of a misdemeanor.]~~

29 V.(a) Except as provided in this paragraph, any person 18 years of age or older who is
30 convicted of violating paragraph II or III~~[- or any person 21 years of age or older who is convicted of~~
31 ~~violating paragraph IV]~~ shall be subject to a fine of ~~[\$100]~~ **\$10** for a first or second offense under this

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1 paragraph, or a fine of up to [~~\$300~~] **\$30** for any subsequent offense [~~within any 3-year period;~~
2 ~~however, any person convicted based upon a complaint which alleged that the person had 3 or more~~
3 ~~prior convictions for violations of paragraph II, III or IV, or under reasonably equivalent offenses in~~
4 ~~an out-of-state jurisdiction since the effective date of this paragraph, within a 3-year period~~
5 ~~preceding the fourth offense shall be guilty of a class B misdemeanor.] The offender shall forfeit the
6 marijuana, regulated marijuana-infused products, or hashish to the state. A court shall waive the
7 fine for a single conviction within a 3-year period upon proof that person has completed a substance
8 abuse assessment by a licensed drug and alcohol counselor within 60 days of the conviction. A
9 person who intends to seek an assessment in lieu of the fine shall notify the court, which shall
10 schedule the matter for review after 180 days. Should proof of completion of an assessment be filed
11 by or before that time, the court shall vacate the fine without a hearing unless requested by a party.~~

12 (b) Any person under 18 years of age who is convicted of violating paragraph II or III
13 shall forfeit the marijuana or hashish and shall be subject to a delinquency petition under RSA 169-
14 B:6.

15 VI.(a) Except as provided in this section, no person shall be subject to arrest for a violation
16 of paragraph II, III, or IV and shall be released provided the law enforcement officer does not have
17 lawful grounds for arrest for a different offense.

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

20 (c) Nothing in this chapter shall be construed as forbidding any police officer from taking
21 into custody any minor who is found violating paragraph II, III, or IV.

22 [~~(d) Any person in possession of an identification card, license, or other form of~~
23 ~~identification issued by the state or any state, country, city, or town, or any college or university,~~
24 ~~who fails to produce the same upon request of a police officer or who refuses to truthfully provide his~~
25 ~~or her name, address, and date of birth to a police officer who has informed the person that he or she~~
26 ~~has been found to be in possession of what appears to the officer to be 3/4 of an ounce or less of~~
27 ~~marijuana, a personal-use amount of a regulated marijuana-infused product, or 5 grams or less of~~
28 ~~hashish, may be arrested for a violation of paragraph II, III, or IV.]~~

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

32 VIII.(a) No record that includes personally identifiable information resulting from a
33 violation of this section shall be made accessible to the public, federal agencies, or agencies from
34 other states or countries.

35 (b) Every state, county, or local law enforcement agency that collects and reports data
36 for the Federal Bureau of Investigation Uniform Crime Reporting Program shall collect data on the
37 number of violations of paragraph II, III, or IV. The data collected pursuant to this paragraph shall

1 be available to the public. A law enforcement agency may update the data annually and may make
2 this data available on the agency's public Internet website.

3 2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(c)-(d) to read as follows:

4 (c) In the case of more than ~~[3/4]~~ **one** ounce of marijuana or more than 5 grams of
5 hashish, including any adulterants or dilutants, the person shall be guilty of a misdemeanor. In the
6 case of marijuana-infused products possessed by persons under the age of 21 or marijuana-infused
7 products as defined in RSA 318-B:2-e, ~~[other than a personal-use amount of a regulated marijuana-~~
8 ~~infused product as defined in RSA 318-B:2-e, I(b), that are possessed by a person 21 years of age or~~
9 ~~older,]~~ the person shall be guilty of a misdemeanor.

10 (d) In the case of ~~[3/4]~~ **one** ounce or less of marijuana or 5 grams or less of hashish,
11 including any adulterants or dilutants, the person shall be guilty of a violation pursuant to RSA 318-
12 B:2-c. ~~[In the case of a person 21 years of age or older who possesses a personal-use amount of a~~
13 ~~regulated marijuana-infused product as defined in RSA 318-B:2-e, I(b), the person shall be guilty of a~~
14 ~~violation pursuant to RSA 318-B:2-e.]~~

15 3 Effective Date. This act shall take effect January 1, 2023.

**HB 1306-FN- FISCAL NOTE
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AN ACT relative to personal possession of marijuana.

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

COUNTY:

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

METHODOLOGY:

This bill affects penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine 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 – Misdemeanor	\$300/Case	\$300/Case
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.		

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.

AGENCIES CONTACTED:

Judicial Branch, Department of Justice, Judicial Council, and New Hampshire Association of Counties