

HB 1611-FN – AS INTRODUCED

2014 SESSION

14-2071  
01/04

HOUSE BILL            ***1611-FN***

AN ACT                adding certain products to the controlled drug act.

SPONSORS:            Rep. Emerson, Ches 11; Rep. Andrews-Ahearn, Rock 37; Rep. DiMartino, Belk 2;  
Rep. J. Johnson, Ches 12; Rep. Chase, Ches 8; Sen. Carson, Dist 14; Sen. Larsen,  
Dist 15; Sen. Gilmour, Dist 12; Sen. Lasky, Dist 13

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill prohibits the possession or use of synthetic cannabinoid agonists or piperazines and methylenedioxypropylone or bath salts by placing them on schedule I of the controlled drug schedules.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT adding certain products to the controlled drug act.

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

1 1 New Paragraph; Controlled Drug Act; Definition Added. Amend RSA 318-B:1 by inserting  
2 after paragraph III the following new paragraph:

3 III-a. “Bath salts” means any synthetic chemical compound that contains  
4 methylenedioxypropylvalerone, mephedrone, propylvalerone, and methylone otherwise known as MDPV.

5 2 New Paragraph; Controlled Drug Act; Definition Added. Amend RSA 318-B:1 by inserting  
6 after paragraph XXXI the following new paragraph:

7 XXXI-a. “Synthetic cannabinoid agonists or piperazines” means any chemical compound that  
8 contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetra-  
9 hydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; or 2-  
10 [(1R,3S)-3-hydroxycyclohexyl] -5-(2-methyloctan -2-yl)phenol). The term shall not include synthetic  
11 cannabinoids that require a prescription, are approved by the United States Food and Drug  
12 Administration, and are dispensed in accordance with state and federal law.

13 3 New Section; Synthetic Cannabinoid Agonists or Piperazines; Methylenedioxypropylvalerone or  
14 Bath Salts. Amend RSA 318-B by inserting after section 1-c the following new section:

15 318-B:1-d Synthetic Cannabinoid Agonists or Piperazines and Methylenedioxypropylvalerone or  
16 Bath Salts.

17 I. The general court intends that the provisions of paragraph II of this section shall remain  
18 in effect until such time as synthetic cannabinoid agonists or piperazines and  
19 methylenedioxypropylvalerone or bath salts are scheduled by the commissioner of the department of  
20 health and human services in accordance with RSA 318-B.

21 II. Notwithstanding the provisions of RSA 318-B:1-a, relative to scheduling by rulemaking of  
22 the commissioner of the department of health and human services, synthetic cannabinoid agonists or  
23 piperazines and methylenedioxypropylvalerone or bath salts shall be placed on schedule I of controlled  
24 drugs.

25 4 Effective Date. This act shall take effect upon its passage.

**HB 1611-FN - FISCAL NOTE**

AN ACT                    adding certain products to the controlled drug act.

**FISCAL IMPACT:**

The Judicial Branch, Department of Justice, Department of Corrections, Judicial Council, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures in FY 2014 and each year thereafter. There will be no impact on local expenditures, or state, county, and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill amends RSA 318-B, the Controlled Drug Act, to prohibit the possession or use of drugs commonly known as “bath salts” by placing them on schedule I of the controlled drug schedules. Schedule I drugs can lead to penalties of up to 20 years for manufacture or sale, or up to 40 years for a subsequent offense. Thus, the potential fiscal impact to the Branch is in the form of additional prosecutions for serious drug offenses. The Branch states it has no information on which to estimate how many additional prosecutions will be brought as a result of the bill. The Branch does, however, have information on the average cost of processing such cases in the trial court. Any felony offense for a violation of the Controlled Drug Act is classified as a routine criminal case in the superior court; the Branch projects that the cost of prosecuting an average routine criminal case in the superior court will be \$425.27 in FY 2015, and \$433.34 in FY 2016. These numbers do not consider the cost of any appeals that may be undertaken following trial. All costs are estimated based on case weight information from the Branch’s last needs assessment completed in 2005.

The Department of Justice states that the Attorney General’s Drug Task Force investigates street-level drug trafficking, and anticipates that inclusion of bath salts on the controlled drug schedules will increase the demand for the Task Force’s investigative resources. In addition, the bill may result in an increased number of drug prosecutions by the Department, but the extent of this increase cannot be estimated. For this reason, the bill’s fiscal impact is indeterminable.

The Department of Corrections states that it is unable to predict the number of individuals who may be found guilty of a felony under the bill, but that the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2013 was

\$32,872. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2013 was \$570.

The Judicial Council assumes that, even though federal law already bans the use and possession of "bath salts," the ban under state law will be enforced more regularly. The Council further assumes that it will have the responsibility of ensuring that anyone charged with a felony drug crime and who is unable to afford the assistance of counsel is provided a lawyer at state expense. Under the statutory order of assignment contained in RSA 604-A:2, representation is provided in the first instance by the public defender program, which provides representation in over 85 percent of indigent-defense cases. If a conflict of interest prevents the public defender program from providing representation in one or more cases, representation would be provided by a contract attorney. These attorneys work on a per-unit basis; Class B felonies are paid out at a rate of \$756.25 per case, and defendants are ordered to repay these costs through the Office of Cost Containment. If a contract attorney is unavailable, the case would go to the assigned counsel system, in which compensation is paid at \$60 per hour up to a cap of \$4,100.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility as a result of the bill, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Department of Health and Human Services and the New Hampshire Municipal Association state the bill will have no fiscal impact.