

HB 1625-FN – AS AMENDED BY THE HOUSE

12Mar2014... 0771h

2014 SESSION

14-2459  
04/01

HOUSE BILL            ***1625-FN***

AN ACT            relative to penalties for possession of marijuana in the amount of one ounce or less and the cultivation of marijuana plants.

SPONSORS:        Rep. Schroadter, Rock 17; Rep. Winters, Hills 18; Rep. Keith Murphy, Hills 7; Rep. Baldasaro, Rock 5; Rep. Meaney, Hills 6; Rep. C. McGuire, Merr 29; Rep. O'Flaherty, Hills 12; Sen. Woodburn, Dist 1

COMMITTEE:      Criminal Justice and Public Safety

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ANALYSIS

This bill reduces the penalty for possession of one ounce or less of marijuana to a violation, and reduces the penalty for possession of other amounts of marijuana. The bill also establishes a misdemeanor penalty for cultivation of 6 or fewer marijuana plants.

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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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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                    relative to penalties for possession of marijuana in the amount of one ounce or less  
and the cultivation of marijuana plants.

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

1            1 New Sections; Controlled Drug Act; Personal Possession of Marijuana. Amend RSA 318-B by  
2 inserting after section 2-b the following new sections:

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

4            I. Any person possessing one ounce or less of marijuana, including adulterants or dilutants,  
5 shall be guilty of a violation.

6            II. Any person possessing 5 grams or less of hashish, including adulterants or dilutants,  
7 shall be guilty of a violation.

8            III.(a) Any person 18 years of age or older who is convicted of violating paragraph I or II  
9 shall be subject to a fine not to exceed \$100 and shall forfeit the marijuana or hashish.

10            (b) Any person under 18 years of age who is convicted of violating paragraph I or II shall  
11 forfeit the marijuana or hashish. The offender's parents or legal guardians shall be notified of the  
12 offense. The court shall order the offender to complete an approved alcohol and substance abuse  
13 education program, at the offender's expense, within one year of the date of the offense. Further, the  
14 court shall order the offender to participate in community service, which shall be completed within  
15 one year of the date of the offense. The offender shall furnish the court with evidence of completion  
16 of both an approved alcohol and substance abuse education program and community service. An  
17 offender who fails to complete both an alcohol and substance abuse education program and  
18 community service shall be subject to an additional fine of \$750.

19            (c) Any person who is not yet 21 years of age on the date of the incident, who is convicted  
20 of an offense under paragraph I or II may, at the discretion of the court, be subject to the revocation  
21 or denial of a driver's license or privilege to drive for not less than 90 days but not more than one  
22 year on the first finding or conviction under this paragraph, and not less than 6 months but not more  
23 than 2 years for a subsequent finding or conviction. Nothing in this paragraph shall prevent the  
24 court from requiring any person subject to its provisions to successfully completing a substance  
25 abuse education program in lieu of a loss or denial of driving license or privilege. The director, upon  
26 receipt of a notification from the court that the court has ordered the suspension of a person's license  
27 or driving privilege pursuant to this paragraph, shall forthwith issue a formal order of suspension  
28 and, in the case of denial of an application for a license, the period imposed shall begin on the date  
29 the person is eligible by age for the issuance of a license. Notwithstanding any other law regarding

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1 confidentiality, any court which convicts or makes a finding that an offense described in this  
2 paragraph has occurred involving a person who meets the age limits specified in this paragraph, and  
3 which orders the revocation or denial of a driver's license or privilege to drive, shall forward a notice  
4 of such conviction or finding to the director. The director shall maintain the confidentiality of notices  
5 received.

6 (d) The director shall, when ordered by the court, revoke the driver's license or privilege  
7 to drive or deny an application for a license for not less than 90 days but not more than one year on  
8 the first finding or conviction under paragraph I or II, and not less than 6 months but not more than  
9 2 years for a subsequent finding or conviction; provided, however, that the director shall not revoke  
10 or deny a license or privilege to drive under this paragraph without first giving the person an  
11 opportunity for a hearing to determine that the person is the individual who was convicted of the  
12 offense and against whom the court order applies. In the case of denial of an application for a  
13 license, the period imposed shall begin on the date the person is eligible by age for the issuance of a  
14 license.

15 IV.(a) No record of a violation of this section shall be recorded in any database of criminal  
16 offenders.

17 (b) No record that includes personally-identifiable information resulting from a violation  
18 of this section shall be made accessible to the public, federal agencies, or agencies from other states  
19 or countries.

20 V.(a) Except as provided in this section, no person shall be subject to arrest for a violation of  
21 paragraph I or II.

22 (b) 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, who  
24 fails to produce the same upon request of a police officer who informs the person that he or she has  
25 been found to be in possession of what appears to the officer to be an ounce or less of marijuana or 5  
26 grams or less of hashish, may be arrested for a violation of paragraph I or II.

27 (c) Any person who fails to produce a form of identification provided for in subparagraph  
28 (b) may be arrested for a violation of paragraph I or II if the person fails or refuses to truthfully  
29 provide his or her name, address, and date of birth to a police officer who has informed such person  
30 that he or she has been found in possession of what appears to the officer to be an ounce or less of  
31 marijuana or 5 grams or less of hashish.

32 VI.(a) Except as specifically provided in RSA 263:56-b, III and IV, neither the state nor any  
33 of its political subdivisions shall impose any form of penalty on a person for possessing one ounce or  
34 less of marijuana, 5 grams or less of hashish, or paraphernalia for marijuana use, nor shall any  
35 penalties or obligations exceeding those outlined in RSA 263:56-b, III or IV be imposed by the state  
36 nor any of its political subdivisions solely for having cannabinoids or cannabinoid metabolites in the  
37 urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the human body.

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1 (b) Possession of one ounce or less of marijuana, possession of 5 grams or less of hashish,  
2 possession of paraphernalia for marijuana use, or the presence of cannabinoids or cannabinoid  
3 metabolites in the urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the  
4 human body shall not constitute grounds for denying a person student financial aid, public housing,  
5 or any form of public financial assistance including unemployment benefits, or denying a person the  
6 right to operate a motor vehicle, or disqualifying a person from serving as a foster parent or adoptive  
7 parent.

8 318-B:2-d Plea by Mail.

9 I. Any person 18 years of age or older who is charged with a violation of RSA 318-B:2-c, I or  
10 II may enter a plea of guilty, nolo contendere, or not guilty, by mail in a circuit court, district  
11 division.

12 II. Such defendant shall receive, in addition to the summons, a fine notice entitled “Notice of  
13 Fine” which shall contain the amount of the fine for a violation of RSA 318-B:2-c I or II. A defendant  
14 who is issued a summons and notice of fine and who wishes to plead guilty or nolo contendere shall  
15 enter his or her plea on the summons and return it with payment of the fine within 30 days of the  
16 date of the summons. Payment by credit card may be accepted in lieu of cash payment.

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

20 IV. Whenever a defendant does not enter a plea by mail within 30 days of the date of the  
21 summons, the defendant shall be defaulted and shall be subject to an additional \$100 fine.

22 V. Whenever a defendant fails to pay a fine in connection with a conviction for a violation of  
23 RSA 318-B:2-c, I or II, or payment of such fine is uncollectible, the defendant shall be defaulted and  
24 the fine shall increase to \$200.

25 2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(b)-(d) to read as follows:

26 (b) In the case of a violation involving any of the following, a person may be sentenced to  
27 a maximum term of imprisonment of not more than 20 years, a fine of not more than \$300,000, or  
28 both. If any person commits such a violation after one or more prior offenses as defined in RSA 318-  
29 B:27, such person may be sentenced to a term of imprisonment of not more than 40 years, a fine of  
30 not more than \$500,000, or both:

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

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

36 (3) Lysergic acid diethylamide, or its analog, in a quantity of less than 100  
37 milligrams including any adulterants or dilutants, or where the amount is undetermined, or

1 phencyclidine (PCP) or its analog, in a quantity of less than 10 grams, including any adulterants or  
2 dilutants, or where the amount is undetermined;

3 (4) Heroin or its analog or crack cocaine in a quantity of one gram or more, including  
4 any adulterants or dilutants;

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

7 (6) ~~[Marijuana in a quantity of 5 pounds or more including any adulterants or~~  
8 ~~dilutants, or hashish in a quantity of one pound or more including any adulterants and dilutants;~~

9 ~~(7)]~~ Flunitrazepam in a quantity of 500 milligrams or more.

10 (c) In the case of a violation involving any of the following, a person may be sentenced to  
11 a maximum term of imprisonment of not more than 7 years, a fine of not more than \$100,000, or  
12 both. If any person commits such a violation after one or more prior offenses as defined in RSA 318-  
13 B:27, such person may be sentenced to a maximum term of imprisonment of not more than 15 years,  
14 a fine of not more than \$200,000, or both:

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

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

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

22 (4) Heroin or its analog or crack cocaine in a quantity of less than one gram,  
23 including any adulterants or dilutants;

24 (5) Marijuana in a quantity of ~~[one ounce]~~ **5 pounds** or more including any  
25 adulterants or dilutants, or hashish in a quantity of ~~[5 grams]~~ **one pound** or more including any  
26 adulterants or dilutants;

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

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

30 (d) 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 3 years, a fine of not more than \$25,000, or both.  
32 If any person commits such a violation after one or more prior offenses as defined in RSA 318-B:27,  
33 such person may be sentenced to a maximum term of imprisonment of not more than 6 years, a fine  
34 of not more than \$50,000, or both:

35 (1) Marijuana in a quantity of ~~[less]~~ **more** than one ounce including any adulterants  
36 or dilutants, or hashish in a quantity of ~~[less]~~ **more** than 5 grams including any adulterants or  
37 dilutants;

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

2 (e) **Any person who possesses, propagates, cultivates, grows, harvests, or**  
3 **manufactures 6 or fewer marijuana plants shall be guilty of a class A misdemeanor.**

4 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II to read as follows:

5 II. Any person who knowingly or purposely obtains, purchases, transports, or possesses  
6 actually or constructively, or has under his control, any controlled drug or controlled drug analog, or  
7 any preparation containing a controlled drug or controlled drug analog, except as authorized in this  
8 chapter, shall be sentenced as follows, except as otherwise provided in this section:

9 (a) In the case of a controlled drug or its analog, classified in schedules I, II, III or IV,  
10 other than those specifically covered in this section, the person shall be guilty of a class B felony,  
11 except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may  
12 be imposed. If any person commits such a violation after one or more prior offenses as defined in  
13 RSA 318-B:27, such person shall be guilty of a class A felony, except that notwithstanding the  
14 provisions of RSA 651:2, IV(a), a fine of up to \$50,000 may be imposed;

15 (b) In the case of a controlled drug or its analog classified in schedule V, the person shall  
16 be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more than  
17 \$15,000, or both. If a person commits any such violation after one or more prior offenses as defined  
18 in RSA 318-B:27, such person shall be guilty of a class B felony, except that notwithstanding the  
19 provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be imposed;

20 (c) ~~In the case of more than 5 grams of hashish, the person shall be guilty of a~~  
21 ~~misdemeanor, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more~~  
22 ~~than \$5,000 may be imposed.~~

23 (d) In the case of **more than one ounce of** marijuana, including any adulterants or  
24 dilutants, or **more than 5 grams or less of hashish**, the person shall be guilty of a class A  
25 misdemeanor.

26 (d) **In the case of one ounce or less of marijuana, including any adulterants or**  
27 **dilutants, or 5 grams or less of hashish, including adulterants or dilutants, the person**  
28 **shall be guilty of a violation pursuant to RSA 318-B:2-c.**

29 4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, III(a) to read as follows:

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

32 5 Other Alcohol or Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as follows:

33 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly  
34 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug  
35 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her  
36 license shall be revoked or his or her right to drive denied for a period of 60 days and at the  
37 discretion of the court for a period not to exceed 2 years. **This section shall not apply to**

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1     *possession of marijuana or hashish as provided in RSA 318-B:2-c.*

2             6 Effective Date. This act shall take effect January 1, 2015.

**HB 1625-FN - FISCAL NOTE**

AN ACT                   relative to penalties for possession of marijuana in the amount of one ounce or less and the cultivation of marijuana plants.

**FISCAL IMPACT:**

The Judicial Branch states this bill, as introduced, may increase state expenditures and decrease state revenue by an indeterminable amount in FY 2015 and each year thereafter. The Department of Safety, and New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. The Department of Corrections states this bill will have an indeterminable fiscal impact on state expenditures in FY 2015 and each year thereafter. There is no impact on local expenditures, or county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill will add RSA 318-B:2-c which would provide that the possession of one ounce or less of marijuana or five grams or less of hashish would be punishable as a violation, not a class A misdemeanor, and that a fine not exceed \$100 for a person 18 years of age or over. If an individual is under the age of 18 they will be required to complete an alcohol and substance abuse education program and participate in community service, failing to do so would result in a \$750 fine. This bill also proposes to reduce the penalty for the cultivation of six or fewer marijuana plants from a felony to a class A misdemeanor. The Branch has no information to estimate how many cases would be impacted by this bill to determine the fiscal impact on expenditures but does have information on the cost for processing a violation, a class A misdemeanor and a felony. The Branch states a violation will cost \$45.46 per case in FY 2015 and \$46.45 per case in FY 2016 and each year thereafter and a class A misdemeanor will cost \$66.17 per case in FY 2015 and \$67.64 per case in FY 2016 and each year thereafter. The Branch states there would be a reduction in the cost to judicial time of \$20.71 in FY 2015 and \$21.19 in FY 2016 and each year thereafter; however the cost to the clerical time would not be impacted. The Branch states the felony offense being reduced by this bill to a class A misdemeanor is typically treated as an average routine criminal case with a cost of \$425.27 in FY 2015 and \$433.34 in FY 2016 and each year thereafter. As noted above, a class A misdemeanor will cost \$66.17 per case in FY 2015 and \$67.64 per case in FY 2016 and each year thereafter. The Branch states there would be a reduction in the cost per case of \$359.10 in FY 2015 and \$365.70 in FY 2016 and each year thereafter. The Branch states this bill may impact fine revenue as it limits the fine to \$100, with the possibility of a \$750 fine for

those under 18 years of age that fail to complete a drug awareness program and/or community service. A class A misdemeanor allows for a fine up to \$2,000. The Branch is not able to determine the exact decrease to revenue. All costs are estimated based on case weight information from the last needs assessment completed in 2005. Since that timeframe there have been various changes that may impact the costs, such as the creation of the circuit court, the increase in self-represented litigants, and the change to presume that an unspecified misdemeanor can be treated as a class B misdemeanor. The Branch states blocking personally identifiable information for violations under RSA 318-B:2-c would result in costs to the Branch related to the need to change business processes and the need hire the vendor of the court's case management system to make programming changes.

The Department of Safety assumes it would have increased expenditures associated with the development of a statistical database with no personally identifiable information to track violations of RSA 318-B:2-c. The Department has no information to determine the cost to develop the necessary database.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states 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 New Hampshire Association of Counties states to the extent individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties will have expenditures. The Association is unable to determine the number of individuals who may 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 Justice states this bill will not have a fiscal impact on the Department because violation and misdemeanor offenses are typically prosecuted by local and county prosecutors not the Department. The Department states it would continue to prosecute cases involving large quantities of controlled drugs, including marijuana and hashish, therefore there is no fiscal impact.

The Judicial Council states marijuana possession is a criminal charge that rarely stands alone and is usually coupled with other criminal acts. The Council also states that many of the cases

involving an ounce or less of marijuana are treated as class B misdemeanor cases which do not carry a potential jail sentence therefore does not trigger a right to representation by the indigent defense system. As a result, the Council states this bill will not have fiscal impact on the Council as it does not result in any more or less cases.