

HB 287-FN - AS AMENDED BY THE SENATE

06/01/2023 2060s

2023 SESSION

23-0541

04/05

HOUSE BILL

287

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

SPONSORS: Rep. Newell, Ches. 4; Rep. Read, Rock. 10; Rep. Popovici-Muller, Rock. 17; Rep. Wheeler, Hills. 33; Rep. Seibert, Hills. 21

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill removes fentanyl and xylazine testing paraphernalia in certain instances from the definition of drug paraphernalia in the controlled drug act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

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

1 1 New Paragraph; Occupations and Professions; Controlled Drug Act; Definitions. Amend RSA
2 318-B:1 by inserting after paragraph X-a the following new paragraph:

3 X-b. Notwithstanding the provisions of RSA 318-B:1, X-a, “drug paraphernalia” shall not
4 include fentanyl test strips, xylazine test strips, or other materials used or intended for use in
5 testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog in a substance, unless
6 possessed in conjunction with other evidence forming the basis of a criminal charge involving the
7 manufacturing, possessing with the intent to sell, or compounding pursuant to RSA 318-B:2, I.

8 2 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0541
12/5/22

**HB - FISCAL NOTE
AS INTRODUCED**

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

FISCAL IMPACT: ☒ State ☒ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
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 exempts fentanyl test strips from the definition of drug paraphernalia. This bill would impact penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer misdemeanor charges would be brought because of the changes contained in this bill in order to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Appeals	Varies	Varies	Varies
Judicial Council	FY 2023		FY 2024
Public Defender Program	Has contract with State to provide services.		Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee		\$300/Case \$70 administrative fee

	\$100 incarceration fee (If applicable)	\$100 incarceration fee (If applicable)
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
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 of 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 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	\$64,223	\$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	\$6,123	\$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	\$688	\$688

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.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

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