

HB 344-FN - AS INTRODUCED

2023 SESSION

23-0023

04/05

HOUSE BILL

**344-FN**

AN ACT relative to the home cultivation of cannabis plants and the possession of certain cannabis-infused products.

SPONSORS: Rep. C. McGuire, Merr. 27; Rep. Bailey, Straf. 2; Rep. O'Brien, Hills. 10; Rep. O'Hara, Belk. 4; Rep. True, Rock. 9; Rep. Phinney, Straf. 9; Rep. Polozov, Merr. 10; Rep. W. Thomas, Hills. 12; Rep. T. Lekas, Hills. 38

COMMITTEE: Criminal Justice and Public Safety

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ANALYSIS

This bill permits adults to possess up to 3/4 of an ounce of cannabis, 5 grams of hashish, and certain cannabis-infused products; permits adults to cultivate up to 6 cannabis plants at home in a secure location that is not visible from other properties, and to possess and process the cannabis produced from their plants at the same location; permits adults to give cannabis to other adults, provided it is not more than 3/4 of an ounce of cannabis, 5 grams of hashish, or up to 300 mg of cannabis-infused products, or 3 immature plants; provides that smoking or vaporizing cannabis in public by an adult would be punishable by a \$100 fine; provides that violations of the restrictions on cultivation would be a violation punishable by fine of up to \$750; penalizes dangerous, volatile extraction; and permits adults to possess, make, and sell cannabis accessories to other adults.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT relative to the home cultivation of cannabis plants and the possession of certain cannabis-infused products.

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

1 1 Statement of Purpose. The general court finds that:

2 I. Since 2012, Canada, the District of Columbia and 9 states, including Maine, Vermont, and  
3 the commonwealth of Massachusetts, have legalized possession and limited cultivation of cannabis  
4 by adults 21 years of age and older.

5 II. Statewide polls have consistently found that most New Hampshire voters support  
6 making cannabis legal for adults 21 years of age and older.

7 III. Cannabis is less harmful than alcohol to the consumer and to society. It is less toxic,  
8 less harmful to the body, less addictive, and less likely to contribute to violent or reckless behavior.  
9 Adults should not be punished for choosing to use cannabis instead of alcohol, if that is what they  
10 prefer.

11 IV. Home brewing of alcoholic beverages is legal in New Hampshire and every other state in  
12 the nation.

13 V. Allowing adults to cultivate their own limited supply of cannabis will provide them with  
14 an alternative to buying cannabis from illicit drug dealers.

15 2 Other Alcohol and Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as  
16 follows:

17 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly  
18 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug  
19 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her  
20 license shall be revoked or his or her right to drive denied for a period of 60 days and at the  
21 discretion of the court for a period not to exceed 2 years. This section shall not apply to the  
22 possession of cannabis or hashish as provided in RSA 318-B:2-c~~[- or a personal-use amount of a  
23 regulated marijuana-infused product as defined in RSA 318-B:2-e, I(b)].~~

24 3 Controlled Drug Act; Personal Possession of Cannabis. Amend RSA 318-B:2-c to read as  
25 follows:

26 318-B:2-c Personal Possession of ~~[Marijuana]~~ **Cannabis**.

27 I. In this section:

28 (a) ~~["Marijuana"]~~ **"Cannabis"** includes the leaves, stems, flowers, and seeds of all  
29 species of the plant genus cannabis, but shall not include the resin extracted from any part of such  
30 plant and every compound, manufacture, salt, derivative, mixture, or preparation from such resin

1 including hashish, and further, shall not include the mature stalks of such plant, fiber produced  
2 from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture,  
3 salt, derivative, mixture, or preparation of such mature stalks, fiber, oil or cake, or the sterilized  
4 seed of such plant which is incapable of germination. Marijuana shall not include hemp grown,  
5 processed, marketed, or sold under RSA 439-A.

6 (b) [~~"Personal use amount of a regulated marijuana-infused product"~~] **"Cannabis-**  
7 **infused product"** means one or more products that is comprised of [~~marijuana, marijuana~~]  
8 **cannabis, cannabis** extracts, or resins and other ingredients and is intended for use or  
9 consumption, such as, but not limited to, edible products, ointments, and tinctures[~~, which was~~  
10 ~~obtained from a state where marijuana sales to adults are legal and regulated under state law, and~~  
11 ~~which is in its original, child-resistant, labeled packaging when it is being stored, and which contains~~  
12 ~~a total of no more than 300 milligrams of tetrahydrocannabinol~~].

13 (c) **"Possession limit" means:**

14 (1) **Three-quarters of an ounce of cannabis, excluding hashish, cannabis-**  
15 **infused products, and growing cannabis plants;**

16 (2) **Five grams of hashish;**

17 (3) **Cannabis-infused products containing no more than 300 milligrams of**  
18 **tetrahydrocannabinol (THC);**

19 (4) **Six cannabis plants, with 3 or fewer being mature, flowering plants; and**

20 (5) **Any additional cannabis, hashish, or cannabis-infused products**  
21 **produced from the person's cannabis plants, provided that any amount of cannabis in**  
22 **excess of 3/4 of an ounce of cannabis, 5 grams of hashish, and cannabis-infused products**  
23 **containing no more than 300 milligrams of THC shall be possessed in the same location**  
24 **where the plants were cultivated.**

25 **I-a. Except as provided in paragraphs I-b and I-c, if undertaken by a person 21**  
26 **years of age or older, the following acts shall not be illegal under New Hampshire law,**  
27 **shall not be a criminal or civil offense under New Hampshire law or the law of any**  
28 **political subdivision of New Hampshire, and shall not be a basis for seizure or forfeiture of**  
29 **assets under New Hampshire law:**

30 (a) **Possessing, consuming, growing, processing, or transporting an amount of**  
31 **cannabis that does not exceed the possession limit; or**

32 (b) **Transferring 3/4 of an ounce of cannabis, 5 grams of hashish, cannabis-**  
33 **infused products containing no more than 300 milligrams of THC, or 3 immature, non-**  
34 **flowering cannabis plants to a person who is 21 years of age or older without**  
35 **remuneration. For purposes of this subparagraph, a transfer is for remuneration if**  
36 **cannabis is given away contemporaneously with another transaction between the same**  
37 **parties, if a gift of cannabis is offered or advertised in conjunction with an offer for sale of**

1 *goods or services, or if the gift of cannabis is contingent upon a separate transaction for*  
2 *goods or services; and*

3 *(c) Manufacturing, possessing, or purchasing cannabis accessories, or*  
4 *distributing or selling cannabis accessories to a person who is 21 years of age or older.*

5 *I-b. No person who is 21 years of age or older shall cultivate cannabis plants except*  
6 *as provided in this section:*

7 *(a) Cannabis plants shall not be cultivated in a location where the plants are*  
8 *subject to public view, including to view from another private property, without the use of*  
9 *binoculars, aircraft, or other optical aids.*

10 *(b) A person who cultivates cannabis shall take reasonable precautions to*  
11 *ensure the plants are secure from unauthorized access. Cultivating cannabis in an*  
12 *enclosed, locked space to which unauthorized persons do not have access, or other similar*  
13 *security precautions, shall be prima facie evidence of reasonable precautions.*

14 *(c) Cannabis cultivation shall only occur at the cultivator's primary residence.*

15 *(d) A person who violates this section shall be guilty of a violation and may be*  
16 *fined not more than \$750.*

17 *I-c. No person shall consume cannabis in a public place. A person 21 years of age*  
18 *or older who violates this paragraph shall be guilty of a violation and may be fined not*  
19 *more than \$100.*

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

23 III. Except as provided in RSA 126-X, any person *under 21 years of age* who knowingly  
24 possesses 5 grams or less of hashish, including adulterants or dilutants, shall be guilty of a violation,  
25 and subject to the penalties provided in paragraph [V] IV.

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

30 V. (a) Except as provided in this paragraph, any person 18 years of age or older who is  
31 convicted of violating paragraph II or III [~~, or any person 21 years of age or older who is convicted of~~  
32 ~~violating paragraph IV]~~ shall be subject to a fine of \$100 for a first or second offense under this  
33 paragraph, or a fine of up to \$300 for any subsequent offense within any 3-year period; however, any  
34 person convicted based upon a complaint which alleged that the person had 3 or more prior  
35 convictions for violations of paragraph [II, III ~~or IV~~] *II or III*, or under reasonably equivalent  
36 offenses in an out-of-state jurisdiction since the effective date of this paragraph, within a 3-year  
37 period preceding the fourth offense shall be guilty of a class B misdemeanor. The offender shall

1 forfeit the [~~marijuana, regulated marijuana-infused products,~~] **cannabis** or hashish to the state. A  
2 court shall waive the fine for a single conviction within a 3-year period upon proof that person has  
3 completed a substance abuse assessment by a licensed drug and alcohol counselor within 60 days of  
4 the conviction. A person who intends to seek an assessment in lieu of the fine shall notify the court,  
5 which shall schedule the matter for review after 180 days. Should proof of completion of an  
6 assessment be filed by or before that time, the court shall vacate the fine without a hearing unless  
7 requested by a party.

8 (b) Any person under 18 years of age who is convicted of violating paragraph II or III  
9 shall forfeit the [~~marijuana~~] **cannabis** or hashish and shall be subject to a delinquency petition  
10 under RSA 169-B:6.

11 [~~VI.~~] V.(a) Except as provided in this section, no person shall be subject to arrest for a  
12 violation of paragraph [~~II, III, or IV~~] **II or III** and shall be released provided the law enforcement  
13 officer does not have lawful grounds for arrest for a different offense.

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

16 (c) Nothing in this chapter shall be construed as forbidding any police officer from taking  
17 into custody any minor who is found violating paragraph [~~II, III, or IV~~] **II or III**.

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

25 [~~VII.] VI.~~ All fines imposed pursuant to this section shall be deposited into the alcohol abuse  
26 prevention and treatment fund established in RSA 176-A:1 and utilized for evidence-informed  
27 substance abuse prevention programs.

28 [~~VIII.] VII.(a)~~ No record that includes personally identifiable information resulting from a  
29 violation of this section shall be made accessible to the public, federal agencies, or agencies from  
30 other states or countries.

31 (b) Every state, county, or local law enforcement agency that collects and reports data  
32 for the Federal Bureau of Investigation Uniform Crime Reporting Program shall collect data on the  
33 number of violations of paragraph [~~II, III, or IV~~] **II or III**. The data collected pursuant to this  
34 paragraph shall be available to the public. A law enforcement agency may update the data annually  
35 and may make this data available on the agency's public Internet website.

36 **VIII. Nothing in this section shall:**

1           (a) *Be construed to require an employer to permit or accommodate the use,*  
2 *consumption, possession, transfer, display, transportation, sale, or growing of cannabis in*  
3 *the workplace or to affect the ability of employers to have policies restricting the use of*  
4 *cannabis by employees.*

5           (b) *Be construed to permit driving or operating under the influence of drugs or*  
6 *liquor pursuant to RSA 265-A, nor prevent the state from enacting and imposing penalties*  
7 *for driving under the influence of or while impaired by cannabis.*

8           (c) *Be construed to permit the transfer of cannabis, with or without*  
9 *remuneration, to a person under 21 years of age, or to allow a person under 21 years of age*  
10 *to purchase, possess, use, transport, grow, or consume cannabis.*

11           (d) *Prohibit a state or county correctional facility from prohibiting the*  
12 *possession, consumption, use, display, transfer, distribution, sale, transportation, or*  
13 *growing of cannabis on or in the correctional facility's property.*

14           (e) *Prohibit a person or other entity that legally owns, leases, or controls any*  
15 *property from prohibiting or otherwise regulating the sale, use, or growing of cannabis on*  
16 *or in the property.*

17           4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(c) and (d) to read as follows:

18           (c) In the case of more than 3/4 ounce of [~~marijuana~~] **cannabis, cannabis-infused**  
19 **products containing more than 300 milligrams of THC**, or more than 5 grams of hashish,  
20 including any adulterants or dilutants, the person shall be guilty of a misdemeanor. In the case of  
21 [~~marijuana-infused~~] **cannabis-infused** products possessed by persons under the age of 21 [~~or~~  
22 ~~marijuana-infused products as defined in RSA 318-B:2-c, other than a personal-use amount of a~~  
23 ~~regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b), that are possessed by a~~  
24 ~~person 21 years of age or older~~], the person shall be guilty of a misdemeanor.

25           (d) In the case of 3/4 ounce or less of [~~marijuana~~] **cannabis** or 5 grams or less of  
26 hashish, including any adulterants or dilutants, **possessed by a person under 21 years of age**, the  
27 person shall be guilty of a violation pursuant to RSA 318-B:2-c. [~~In the case of a person 21 years of~~  
28 ~~age or older who possesses a personal-use amount of a regulated marijuana-infused product as~~  
29 ~~defined in RSA 318-B:2-c, I(b), the person shall be guilty of a violation pursuant to RSA 318-B:2-c.]~~

30           5 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after  
31 paragraph VIII the following new paragraph:

32           VIII-a.(a) No person, other than an alternative treatment center approved pursuant to RSA  
33 126-X, shall perform solvent-based extractions on cannabis using solvents other than water,  
34 glycerin, propylene glycol, vegetable oil, or food grade ethanol.

35           (b) No person shall extract compounds from cannabis using ethanol in the presence or  
36 vicinity of an open flame.

37           (c) Any person who violates this paragraph shall be guilty of a class A misdemeanor.

**HB 344-FN - AS INTRODUCED**

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1           6 Model Drug Dealer Liability Act; Definitions. Amend RSA 318-C:4, I to read as follows:

2           I. "Illegal drug" means any drug which is a schedule I-IV drug under RSA 318-B, *the*  
3 *possession, use, manufacture, sale, or transportation of which is not otherwise authorized*  
4 *by law.*

5           7 Effective Date. This act shall take effect January 1, 2024.

**HB 344-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to the home cultivation of cannabis plants and the possession of certain cannabis-infused products.

**FISCAL IMPACT:**     State                     County                     Local                     None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<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:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

The Office of Legislative Budget Assistant is still awaiting information from the Department of Justice. The Department was originally contacted on October 21, 2022 and again with followup November 7th, November 17th and December 1st. When completed, the fiscal note will be forwarded to the House Clerk's Office.

**METHODOLOGY:**

The Judicial Branch states permitting people to grow their own cannabis plants, may increase the supply and ubiquity of cannabis in New Hampshire's communities. Making consumption of cannabis in public a violation-level offense, may increase the number of violation-level offenses in the Circuit Courts. However, decriminalizing possession of personal-use amounts of cannabis for adults 21 years of age or older may decrease the number of violation-level possession offenses in the Circuit Courts. The Branch is unable to make any conclusions as to whether the proposed bill increases or decreases the number of marijuana-related charges presently brought in the state courts. The bill may change the amount of fine money deposited into the alcohol abuse prevention and treatment fund under RSA 318-B:2-c, VII. If the bill becomes law, the Branch



would need to amend its data governance policies and reconfigure its case management system to reflect the nondisclosure requirements related to the covered offenses. Those changes would require assistance from the Branch's case management vendor and would result in additional expenditures.

The Judicial Council indicates this bill would not impact indigent defense expenditures. The indigent defense system handles very few stand-alone marijuana possession cases, so a decrease in those charges will not impact expenditures. Individuals are not entitled to court-appointed counsel for a violation level offense so representation would not be provided through the indigent defense system for violating this statute.

The Department of Corrections indicates this bill would impact the number of parole violations associated with misuse of cannabis and may cause a decrease in violation rates. Such impact is indeterminable. The Department states the average cost of incarcerating an individual in general population for the fiscal year ending June 30, 2022, was \$64,233. The average cost to supervise an individual by the Department's Division of Field Services for the fiscal year ending June 30, 2022, was \$688.

The Department of Health and Human Services, Bureau of Drug and Alcohol Services notes there is considerable uncertainty about the impact that legalizing personal use of marijuana in New Hampshire would have on public budgets including the potential increase in consumption, treatment utilization, and associated costs. The Bureau states the science is currently divided on the causal effects of marijuana on psychoses, schizophrenia, and drugged driving and, therefore, the Department is unable to determine if services related to these areas would experience additional costs. The change in fine revenue deposited into the alcohol fund to support treatment and prevention services is also indeterminable.

The Department of Safety, Division of State Police indicates the fiscal impact to the Department is indeterminable. The Division indicates in general the fiscal impact on law enforcement throughout the State would increase and lead to a need for increased manpower and training. This would be due to the increased use of marijuana by adults and no measures restricting juvenile access to plants being grown in households. The Department assumes the bill would likely result in an increase in impaired drivers, toxicology testing and crimes such as robbery, burglary and theft.

The New Hampshire Municipal Association states it is likely that New Hampshire municipalities will see some indeterminable increase in costs associated with partial legalization of cannabis and cannabis products. The Association indicates such increase is indeterminable because of the difficulty obtaining information relative to effects of legalization on crime

statistics, ambulance deployment statistics, employer drug-testing changes, the existing status of New Hampshire as a small state surrounded by states where cannabis is legal in some form, and the existing gray and black markets for cannabis. New rules relative to possession, cultivation, and gifts, will likely see a shift in law enforcement focus, leading to new and different costs. The bill would not impact municipal revenue.

The New Hampshire Association of Counties does not anticipate any cost or revenue impact as a result of this bill.

**AGENCIES CONTACTED:**

Judicial Branch, Judicial Council, Departments of Corrections, Health and Human Services, Justice and Safety, New Hampshire Municipal Association and New Hampshire Association of Counties