

HB 360-FN - AS INTRODUCED

2023 SESSION

23-0241

04/05

HOUSE BILL ***360-FN***

AN ACT an act legalizing cannabis for persons 21 years of age or older.

SPONSORS: Rep. Verville, Rock. 2; Rep. Polozov, Merr. 10; Rep. T. Lekas, Hills. 38; Rep. Hynes, Hills. 2

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill legalizes the possession and use of cannabis for persons 21 years of age and older.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT an act legalizing cannabis for persons 21 years of age or older.

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

1 1 Use of Cannabis for Therapeutic Purposes; Prohibitions and Limitations. Amend RSA 126-
2 X:3, VI to read as follows:

3 VI. Any qualifying patient or designated caregiver who sells cannabis to another person who
4 is not a qualifying patient or designated caregiver under this chapter shall ~~be subject to the~~
5 ~~penalties specified in RSA 318-B:26, IX-a, shall~~ have his or her registry identification card revoked,
6 ~~and shall be subject to other penalties as provided in RSA 318-B:26~~.

7 2 Purity Branding of Food; Drugs, Devices, and Misbranding. Amend RSA 146:6, IV to read as
8 follows:

9 IV. If it is for use by man and contains any quantity of the narcotic or hypnotic substance
10 alpha-eucaine, barbituric acid, beta-eucaine, bromal, ~~cannabis,~~ carbromal, chloral, coca, cocaine,
11 codeine, heroin, ~~marijuana,~~ morphine, opium, paraldehyde, peyote, or sulphonmethane, or any
12 chemical derivative of such substance, which derivative has been by the commissioner after
13 investigation found to be, and by regulation designated as, habit-forming, unless its label bears the
14 name and quantity or proportion of such substance or derivative and in juxtaposition therewith the
15 statement "Warning - May Be Habit Forming."

16 3 Delinquent Children; Definitions. Amend RSA 169-B:2, IV to read as follows:

17 IV. "Delinquent" means a person who has committed an offense before reaching the age of
18 18 years which would be a felony or misdemeanor under the criminal code of this state if committed
19 by an adult, ~~or which is a violation of RSA 318-B:2-e, II or III,~~ **or is a violation of RSA 318-B:26,**
20 **IX-b,** and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as
21 a consequence thereof. No person under 13 years of age shall be subject to proceedings under this
22 chapter unless such person has committed a violent crime as defined in RSA 169-B:35-a, I(c). This
23 provision shall not be construed to limit the filing of a petition for any minor child under RSA 169-D.

24 4 Alcohol or Drug Impairment; Possession of Drugs. Amend RSA 265-A:43 to read as follows:

25 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly
26 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug
27 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her
28 license shall be revoked or his or her right to drive denied for a period of 60 days and at the
29 discretion of the court for a period not to exceed 2 years. ~~[This section shall not apply to the~~
30 ~~possession of marijuana or hashish as provided in RSA 318-B:2-e, or a personal use amount of a~~
31 ~~regulated marijuana-infused product as defined in RSA 318-B:2-e, I(b).]~~

HB 360-FN - AS INTRODUCED

- Page 2 -

1 5 Controlled Drug Act; Definitions. Amend RSA 318-B:1, XVII to read as follows:

2 XVII. "Narcotic drugs" means cocaine-type and morphine-type drugs, and *other* drugs
3 ~~[other than cannabis-type]~~ regulated under the Comprehensive Drug Abuse Prevention and Control
4 Act of 1970.

5 6 Controlled Drug Act; Definitions. Amend RSA 318-B:1, XX to read as follows:

6 XX. "Other stimulant and depressant drugs" means controlled drugs other than
7 amphetamine-type, barbiturate-type, ~~[cannabis-type,]~~ cocaine-type, hallucinogenics, and morphine-
8 type which are found to exert a stimulant and depressant effect upon the higher functions of the
9 central nervous system and which are found to have a potential for abuse.

10 7 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(b)(6)-(7) to read as follows:

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

13 (7) Flunitrazepam in a quantity of 500 milligrams or more.

14 8 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(c)(5)-(6) to read as follows:

15 (5) ~~[Marijuana in a quantity of one ounce or more including any adulterants or~~
16 ~~dilutants, or hashish in a quantity of 5 grams or more including any adulterants or dilutants;~~

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

18 9 Controlled Drug Act; Penalties. Amend RSA 318-B:26, III(a) to read as follows:

19 (a) ~~[Except as provided in RSA 318-B:2-e,]~~ Controls any premises or vehicle where he or
20 she knows a controlled drug or its analog is illegally kept or deposited;

21 10 Controlled Drug Act; Penalties. Amend RSA 318-B:26, XIII to read as follows:

22 XIII. Any person who violates any provision of this chapter shall be fined a minimum of
23 \$350 for a first offense and \$500 for a second or subsequent offense, except that any person who
24 violates the provisions of RSA 318-B:26, II(c) or RSA 318-B:26, II(d) shall be fined \$350. ~~[This~~
25 ~~paragraph shall not apply to violations of RSA 318-B:2-e.]~~

26 11 New Paragraphs; Controlled Drug Act; Penalty for Juvenile Possession of Marijuana. Amend
27 RSA 318-B:26 by inserting after paragraph IX-a the following new paragraphs:

28 IX-b. Any person under 18 years of age who is in possession of marijuana shall be referred
29 for a substance misuse assessment pursuant to RSA 169-B:21 and the case shall be processed as a
30 juvenile case under RSA 169-B.

31 IX-c. Except as provided in paragraph IX-b, any person under 21 years of age who possesses
32 or uses marijuana shall be guilty of a violation.

33 IX-d. Any person who uses marijuana in a public place shall be guilty of a violation.

34 12 Controlled Drug Act; Penalties. Amend RSA 318-B:26, XI to read as follows:

35 XI. Any person who violates any provision of this chapter for which a penalty is not provided
36 by paragraphs I through ~~[IX]~~ **IX-d** shall be guilty of a class B felony if a natural person, or guilty of a
37 felony if any other person.

HB 360-FN - AS INTRODUCED

- Page 3 -

1 13 Controlled Drug Act; Prior Offenses. Amend RSA 318-B:27 to read as follows:

2 318-B:27 Prior Offenses. In the case of any person charged with a violation of any provision of
3 this chapter or RSA 318-D, who has previously been convicted of a misdemeanor or felony level
4 violation of the laws of the United States or any state, territory or the District of Columbia relating
5 to controlled drugs as defined in this chapter, such previous conviction shall be deemed a prior
6 offense. A prior conviction for a violation level offense shall not be deemed a prior offense~~[-except as~~
7 ~~provided in RSA 318-B:2-e, V(a)].~~

8 14 Model Drug Dealer Liability Act; Definition of Illegal Drug. Amend RSA 318-C:4, I to read as
9 follows:

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

13 15 Model Drug Dealer Liability Act; Marijuana References Deleted. Amend RSA 318-C:4, V-
14 VIII to read as follows:

15 V. "Level 1 offense" means possession of 1/4 ounce or more, but less than 4 ounces, or
16 distribution of less than one ounce of an illegal drug ~~[other than marijuana, or possession of one~~
17 ~~pound or more or 25 plants or more, but less than 4 pounds or 50 plants, or distribution of more than~~
18 ~~1/2 pound but less than one pound of marijuana].~~

19 VI. "Level 2 offense" means possession of 4 ounces or more, but less than 8 ounces, or
20 distribution of one ounce or more, but less than 2 ounces, of an illegal drug ~~[other than marijuana, or~~
21 ~~possession of 4 pounds or more or 50 plants or more but less than 8 pounds or 75 plants or~~
22 ~~distribution of one pound or more but less than 5 pounds of marijuana].~~

23 VII. "Level 3 offense" means possession of 8 ounces or more, but less than 16 ounces, or
24 distribution of 2 ounces or more, but less than 4 ounces, of an illegal drug ~~[other than marijuana, or~~
25 ~~possession of 8 pounds or more or 75 plants or more, but less than 16 pounds or 100 plants, or~~
26 ~~distribution of 5 pounds or more but less than 10 pounds of marijuana].~~

27 VIII. "Level 4 offense" means possession of 16 ounces or more or distribution of 4 ounces or
28 more of an illegal drug ~~[other than marijuana, or possession of 16 pounds or more or 100 plants or~~
29 ~~more or distribution of 10 pounds or more of marijuana].~~

30 16 Wiretapping and Eavesdropping; Definitions. Amend RSA 570-A:1, XI to read as follows:

31 XI. "Organized crime" means the unlawful activities of the members of a highly organized,
32 disciplined association engaged in supplying illegal goods and services, including but not limited to
33 homicide, gambling, prostitution, narcotics, ~~[marijuana]~~ or other dangerous drugs, bribery, extortion,
34 blackmail and other unlawful activities of members of such organizations.

35 17 Wiretapping and Eavesdropping; Authorization for Interception of Telecommunication.
36 Amend RSA 570-A:7 to read as follows:

HB 360-FN - AS INTRODUCED

- Page 4 -

1 570-A:7 Authorization for Interception of Telecommunications or Oral Communications. The
2 attorney general, deputy attorney general, or a county attorney, upon the written approval of the
3 attorney general or deputy attorney general, may apply to a judge of competent jurisdiction for an
4 order authorizing or approving the interception of telecommunications or oral communications, and
5 such judge may grant, in conformity with RSA 570-A:9, an order authorizing or approving the
6 interception of telecommunications or oral communications by investigative or law enforcement
7 officers having responsibility for the investigation of the offenses as to which the application is made,
8 when such interception may provide, or has provided, evidence of the commission of organized crime,
9 as defined in RSA 570-A:1, XI, or evidence of the commission of the offenses of homicide, kidnapping,
10 gambling, theft as defined in RSA 637, corrupt practices as defined in RSA 640, child sexual abuse
11 images under RSA 649-A, computer pornography and child exploitation under RSA 649-B, criminal
12 conduct in violation of the securities law, as defined in RSA 421-B:5-501, RSA 421-B:5-502, RSA 421-
13 B:5-502-A, RSA 421-B:5-505, RSA 421-B:5-506, and RSA 421-B:5-508, criminal conduct in violation
14 of the security takeover disclosure laws, as defined in RSA 421-A:3, 421-A:7, 421-A:8, 421-A:11, and
15 421-A:13, robbery as defined in RSA 636:1, arson as defined in RSA 634:1, hindering apprehension
16 or prosecution as defined in RSA 642:3, tampering with witnesses and informants as defined in RSA
17 641:5, aggravated felonious sexual assault as defined in RSA 632-A:2, felonious sexual assault as
18 defined in RSA 632-A:3, escape as defined in RSA 642:6, bail jumping as defined in RSA 642:8,
19 insurance fraud as defined in RSA 638:20, dealing in narcotic drugs, [~~marijuana~~] or other dangerous
20 drugs, hazardous waste violations under RSA 147-A:4, I, or any conspiracy to commit any of the
21 foregoing offenses.

22 18 Deletion of Cannabis from Controlled Drug Schedule. Notwithstanding RSA 318-B:1-a, and
23 not more than 30 days after the effective date of this act, the commissioner of the department of
24 health and human services shall delete cannabis from the schedule of controlled drugs which are
25 subject to RSA 318-B.

26 19 Annulment of Existing Cannabis-Related Criminal Convictions and Sentences.
27 Notwithstanding RSA 651:5, or any other provision of law to the contrary, any person convicted or
28 sentenced to imprisonment for a cannabis-related offense, or who is serving a sentence for a
29 cannabis-related offense as of the effective date of this act shall have his or her conviction or
30 sentence of imprisonment annulled by the sentencing court on the effective date of this act. Any
31 person who has been arrested for a cannabis-related offense as of the effective date of this act shall
32 have the criminal charges dismissed on the effective date of this act.

33 20 State Enforcement of Federal Cannabis Laws Prohibited. As of the effective date of this act,
34 no state, county, or local law enforcement agency shall enforce any federal law prohibiting the
35 manufacture, processing, possession, sale, transfer, or use of cannabis.

36 21 Repeal. The following are repealed:

HB 360-FN - AS INTRODUCED

- Page 5 -

1 I RSA 167:7-b, relative to prohibiting the use of electronic benefits cards at a marijuana
2 dispensary.

3 II. RSA 318-B:1, IV, relative to the definition of cannabis-type drug.

4 III. RSA 318-B:1, X-a(g), relative to separation gins and sifters for cleaning and refining
5 marijuana.

6 IV. RSA 318-B:2-c, relative to personal possession of marijuana.

7 V. RSA 318-B:2-d, relative to plea by mail for violations of personal possession of marijuana.

8 VI. RSA 318-B:2-e, relative to negligent storage of marijuana-infused products.

9 VII. RSA 318-B:9, VI, relative to a pharmacist's authority to dispense cannabis-type drugs
10 pursuant to a physician's prescription.

11 VIII. RSA 318-B:26, II(c)-(d), relative to the penalties for possession or use of marijuana.

12 22 Effective Date. This act shall take effect January 1, 2024.

**HB 360-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT an act legalizing cannabis for persons 21 years of age or older.

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	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input checked="" type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Alcohol Abuse, Prevention and Treatment Fund, Various Government Funds			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill legalizes the possession and use of cannabis for persons 21 years of age and older. This bill contains 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 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
Routine Criminal Case	\$644	\$657	\$779
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 - Felony	\$825/Case \$105 administrative fee \$200 incarceration fee (If applicable)	\$825/Case \$105 administrative fee \$200 incarceration fee (If applicable)
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	\$90/Hour up to \$5,500	\$90/Hour up to \$5,500
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
<p>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.</p>		
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
<p>The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the NH State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.</p>		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

The Department of Safety indicates the fiscal impact of this bill is indeterminable as it is impossible to predict criminal activities related to cannabis legalization. Based on information from impact reports provided by High Intensity Drug Trafficking Areas (HIDTA) program on the states of Illinois and Colorado where marijuana is legal, the Department has provided the following information and assumptions:

- Due to the nature of THC metabolization, especially for chronic users, there is no national standard for determining impairment by drivers using marijuana.
- Marijuana use in both states has increased significantly since its legalization including among minors.
- The average THC level in marijuana products has risen from 3 percent to 23 percent in smokable marijuana and from 56 percent to 99 percent for other forms (waxes, oils, and edibles)
- Despite legalization, marijuana trafficking and the black market marijuana continue to be enforcement challenges in both states.
- Traffic deaths involving drivers who tested positive for marijuana and incidents of driving under the influence have increased.
- Treatment for marijuana use in Colorado has decreased and suicide incidents in which toxicology results were positive for marijuana have increased.

The Department states while they cannot predict the financial impact to New Hampshire, the Department assumes, based on the experiences from Illinois and Colorado, the financial impact due to the increased enforcement issues could be significant. In addition, the Department assumes, the enforcement issues may increase in crimes such as robbery, burglary, and theft. These enforcement issues will impact local and state law enforcement and lead to a need for increases in manpower and training.

The New Hampshire Municipal Association indicates this bill would increase local expenditures by an indeterminable amount. Based on review of limited research available relative to changes in policing related to cannabis legalization in any forms by other states, the New Hampshire Municipal Association identified the potential fiscal impacts listed below. Much of the research has been funded through National Institute of Justice (NIJ) grants provided by the U.S. Department of Justice and is based on experiences in Washington State and Colorado.

- Greater access to cannabis may increase youth access and driving while under the influence incidents, leading to a shift in law enforcement focus and a need for additional training in detection, such as Drug Recognition Expert (DRE) training. These shifts may increase law enforcement costs, particularly in the field of specialized training for detection of impairment by cannabis.
- Based on information from other states with legalization, there have been reduced law enforcement costs associated with drug detection and prosecution for simple possession cases, freeing up funds for other uses.
- Border states where cannabis is illegal and border states where some amount of cannabis is legal, have experienced additional incidents related to driving while under the influence, particularly in counties near the border. As New Hampshire is bordered on all

sides by legalized states it is likely that some additional enforcement costs are already being borne by municipal police departments.

- Most research funded by NIJ grants shows that legalization has minimal, if any, effects on violent crime.
- Generally, research in states that have legalized cannabis has shown more patients presenting in the emergency department with physical or psychological symptoms resultant from using marijuana or commercial cannabis products. While no research appears to exist relative to the number of patients arriving via ambulance, it stands to reason that some portion of patients do utilize ambulance services to arrive at emergency departments. Additionally, there may be some number of users who call for emergency medical assistance are not transported for treatment at the emergency department. Based on the information available, municipalities should expect some increase in costs associated with EMS, if limited legalization increases the incidence of individuals utilizing cannabis.
- The bill does not prohibit employers from prohibiting use of cannabis. It is likely that municipalities will prohibit some employees from using cannabis, particularly those in occupations where federal licensure or permission is necessary. This will likely include those with Commercial Drivers Licenses, who utilize those licenses while on the job, and those working at federal facilities, such as airports. It is possible that municipalities may require additional or routine cannabis-use testing if limited legalization is implemented, leading to additional costs.

The Association does not anticipate any impact on local revenue.

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.

Under current law, all fines imposed pursuant to RSA 318-B:2-c are deposited into the alcohol abuse prevention and treatment fund. The repeal of RSA 318-B:2-c will decrease revenue to this fund.

AGENCIES CONTACTED:

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