

HB 511-FN - AS INTRODUCED

2021 SESSION

21-0743

04/11

HOUSE BILL

511-FN

AN ACT relative to the penalties for possession of certain controlled drugs.

SPONSORS: Rep. Kenney, Straf. 6; Rep. Frost, Straf. 16; Rep. Hyland, Hills. 38; Rep. Read, Rock. 17; Rep. Schultz, Merr. 18; Rep. Spillane, Rock. 2; Rep. Horrigan, Straf. 6; Rep. Abramson, Rock. 37; Rep. Labranche, Hills. 22; Rep. Espitia, Hills. 31; Sen. Reagan, Dist 17

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill makes the first 4 convictions for possession of a certain amount of schedule I-IV controlled drugs a misdemeanor offense. The bill also makes possession of any amount of flunitrazepam (rohypnol) a felony offense.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the penalties for possession of certain controlled drugs.

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

1 1 Controlled Drug Act; Penalties for Possession Offenses. Amend RSA 318-B:26, II to read as
2 follows:

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

8 (a) In the case of a controlled drug or its analog, classified in schedules I, II, III, or IV,
9 other than those specifically covered in this section, ***except in the case of a person who possesses***
10 ***4 grams or less***, the person shall be guilty of a class B felony, except that notwithstanding the
11 provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be imposed. If any person
12 commits such a violation after one or more prior offenses as defined in RSA 318-B:27, such person
13 shall be guilty of a class A felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a
14 fine of up to \$50,000 may be imposed. ***In the case of possession of 4 grams or less, the person***
15 ***shall be guilty of a class B misdemeanor. If any such person commits an offense after 4***
16 ***prior offenses as defined in RSA 318-B:27, such person shall be guilty of a class A felony,***
17 ***excluding the case of a controlled drug or its analog classified in schedule V, except that***
18 ***notwithstanding the provisions of RSA 651:2, IV(a), a fine of up to \$50,000 may be imposed.***

19 (b) In the case of a controlled drug or its analog classified in schedule V, the person shall
20 be ~~[sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more than~~
21 ~~\$15,000, or both. If a person commits any such violation after one or more prior offenses as defined~~
22 ~~in RSA 318-B:27]~~***shall be guilty of a class B misdemeanor. If any such person commits an***
23 ***offense after 4 prior offenses as defined in RSA 318-B:27***, such person shall be guilty of a class
24 B felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than
25 \$25,000 may be imposed.

26 (c) In the case of more than 3/4 ounce of marijuana or more than 5 grams of hashish,
27 including any adulterants or dilutants, the person shall be guilty of a misdemeanor. In the case of
28 marijuana-infused products possessed by persons under the age of 21 or marijuana-infused products
29 as defined in RSA 318-B:2-e, other than a personal-use amount of a regulated marijuana-infused
30 product as defined in RSA 318-B:2-c, I(b), that are possessed by a person 21 years of age or older, the
31 person shall be guilty of a misdemeanor.

HB 511-FN - AS INTRODUCED

- Page 2 -

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

(e) In the case of a residual amount of a controlled substance, as defined in RSA 318-B:1, XXIX-a, a person shall be guilty of a misdemeanor if the person is not part of a service syringe program under RSA 318-B:43.

(f) In the case of possession of any amount of flunitrazepam (known as rohypnol or gamma hydroxybutyrate), such person shall be guilty of a class B felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be imposed.

2 Effective Date. This act shall take effect January 1, 2022.

**HB 511-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the penalties for possession of certain controlled drugs.

FISCAL IMPACT: ☒ **State** ☒ **County** ☐ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
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 makes the first 4 convictions for possession of a certain amount of schedule I-IV controlled drugs a misdemeanor offense. The bill also makes possession of any amount of flunitrazepam (rohypnol) a felony offense. 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 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 2021	FY 2022
Class B Misdemeanor	\$55	\$55
Simple Criminal Case	\$309	\$309
Routine Criminal Felony Case	\$494	\$494
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
Judicial Council		
Public Defender Program	Has contract with State to	Has contract with State to

	provide services.	provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
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. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

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 would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

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