

HB 1468-FN - AS INTRODUCED

2022 SESSION

22-2579

04/08

HOUSE BILL            ***1468-FN***

AN ACT                relative to the legalization of cannabis.

SPONSORS:           Rep. Laughton, Hills. 31; Rep. Labranche, Hills. 22

COMMITTEE:        Criminal Justice and Public Safety

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ANALYSIS

This bill legalizes the possession and use of cannabis for persons 18 years of age or older.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                   relative to the legalization of cannabis.

*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-c, 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-c, or a personal use amount of a~~  
31 ~~regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b).]~~

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

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

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

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

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

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

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

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

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

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

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

(d) In the case of a violation involving any ~~[of the following]~~ **schedule V substance or its analog**, a person may be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more than \$25,000, or both. If any person commits such a violation after one or more prior offenses as defined in RSA 318-B:27, such person may be sentenced to a maximum term of imprisonment of not more than 6 years, a fine of not more than \$50,000, or both[;

(1) ~~Marijuana in a quantity of less than one ounce including any adulterants or dilutants, or hashish in a quantity of less than 5 grams including any adulterants or dilutants;~~

(2) ~~Any schedule V substance or its analog].~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1       17 Wiretapping and Eavesdropping; Definitions. Amend RSA 570-A:1, XI to read as follows:

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

6       18 Wiretapping and Eavesdropping; Authorization for Interception of Telecommunication.  
7 Amend RSA 570-A:7 to read as follows:

8       570-A:7 Authorization for Interception of Telecommunications or Oral Communications. The  
9 attorney general, deputy attorney general, or a county attorney, upon the written approval of the  
10 attorney general or deputy attorney general, may apply to a judge of competent jurisdiction for an  
11 order authorizing or approving the interception of telecommunications or oral communications, and  
12 such judge may grant, in conformity with RSA 570-A:9, an order authorizing or approving the  
13 interception of telecommunications or oral communications by investigative or law enforcement  
14 officers having responsibility for the investigation of the offenses as to which the application is made,  
15 when such interception may provide, or has provided, evidence of the commission of organized crime,  
16 as defined in RSA 570-A:1, XI, or evidence of the commission of the offenses of homicide, kidnapping,  
17 gambling, theft as defined in RSA 637, corrupt practices as defined in RSA 640, child sexual abuse  
18 images under RSA 649-A, computer pornography and child exploitation under RSA 649-B, criminal  
19 conduct in violation of the securities law, as defined in RSA 421-B:5-501, RSA 421-B:5-502, RSA 421-  
20 B:5-502-A, RSA 421-B:5-505, RSA 421-B:5-506, and RSA 421-B:5-508, criminal conduct in violation  
21 of the security takeover disclosure laws, as defined in RSA 421-A:3, 421-A:7, 421-A:8, 421-A:11, and  
22 421-A:13, robbery as defined in RSA 636:1, arson as defined in RSA 634:1, hindering apprehension  
23 or prosecution as defined in RSA 642:3, tampering with witnesses and informants as defined in RSA  
24 641:5, aggravated felonious sexual assault as defined in RSA 632-A:2, felonious sexual assault as  
25 defined in RSA 632-A:3, escape as defined in RSA 642:6, bail jumping as defined in RSA 642:8,  
26 insurance fraud as defined in RSA 638:20, dealing in narcotic drugs, [~~marijuana~~] or other dangerous  
27 drugs, hazardous waste violations under RSA 147-A:4, I, or any conspiracy to commit any of the  
28 foregoing offenses.

29       19 Deletion of Cannabis from Controlled Drug Schedule. Notwithstanding RSA 318-B:1-a, and  
30 not more than 30 days after the effective date of this act, the commissioner of the department of  
31 health and human services shall delete cannabis from the schedule of controlled drugs which are  
32 subject to RSA 318-B.

33       20 Annulment of Existing Cannabis-Related Criminal Convictions and Sentences.  
34 Notwithstanding RSA 651:5, or any other provision of law to the contrary, any person convicted or  
35 sentenced to imprisonment for a cannabis-related offense, or who is serving a sentence for a  
36 cannabis-related offense as of the effective date of this act shall have his or her conviction or  
37 sentence of imprisonment annulled by the sentencing court on the effective date of this act. Any

1 person who has been arrested for a cannabis-related offense as of the effective date of this act shall  
2 have the criminal charges dismissed on the effective date of this act.

3 21 State Enforcement of Federal Cannabis Laws Prohibited. As of the effective date of this act,  
4 no state, county, or local law enforcement agency shall enforce any federal law prohibiting the  
5 manufacture, processing, possession, sale, transfer, or use of cannabis.

6 22 Repeal. The following are repealed:

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

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

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

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

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

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

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

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

18 23 Effective Date. This act shall take effect January 1, 2023.

**HB 1468-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to the legalization of cannabis.

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

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<b>Expenditures</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Drg Forfeiture and Alcohol Abuse Prevention and Treatment Funds			

**COUNTY:**

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

**METHODOLOGY:**

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 Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to 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. 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 to 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 2022	FY 2023
FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. 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. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

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.

**AGENCIES CONTACTED:**

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