

HB 1392-FN - AS INTRODUCED

2022 SESSION

22-2674

04/05

HOUSE BILL ***1392-FN***

AN ACT relative to penalties for nonviolent drug offenses and repealing the criminal penalties for possession of drug paraphernalia.

SPONSORS: Rep. Abramson, Rock. 37; Rep. Ankarberg, Straf. 10; Rep. Adjutant, Graf. 17

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill reduces the penalties for nonviolent drug offenses and eliminates the prohibitions and penalties for the possession, use, or sale of drug paraphernalia.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 penalties for nonviolent drug offenses and repealing the criminal penalties for possession of drug paraphernalia.

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

1 1 Repeal. The following are repealed:

2 I. RSA 318-B:1, X-a, relative to drug paraphernalia.

3 II. RSA 318-B:2, II, relative to possession or delivery of drug paraphernalia.

4 III. RSA 318-B:2, II-a, relative to the sale of drug paraphernalia.

5 IV. RSA 318-B:2, III, relative to advertising or promoting the sale of drug paraphernalia.

6 V. RSA 318-B:2, IV, relative to the circumstances for determining if an object is drug
7 paraphernalia.

8 VI. RSA 318-B:26, III(c), relative to the penalties for drug paraphernalia.

9 VII. RSA 318-B:26, III(d), relative to the penalty for advertising drug paraphernalia.

10 2 New Paragraph; Controlled Drug Act; Penalties for Non-violent Drug Offenses. Amend RSA
11 318-B:26 by inserting after paragraph X the following new paragraph:

12 X-a.(a) A person who commits an offense that violates a provision of this chapter for which a
13 penalty is specified in paragraphs I-IX-a where no element of the offense involves an act of violence
14 or threat of violence, shall not be subject to the penalties specified in paragraphs I-IX-a, but shall be
15 penalized as follows:

16 (1) For offenses involving cocaine, heroin, methamphetamine, lysergic acid
17 methylamine (LSD), or phencyclidine (PCP), \$40 per gram; and

18 (2) For offenses involving any other controlled drug prohibited under this chapter,
19 \$20 per gram.

20 (b) In this paragraph, the term "act of violence" means attempting to cause or purposely
21 or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; and the
22 term "threat of violence" means placing or attempting to place another in fear of imminent bodily
23 injury either by physical menace or by threats to commit a crime against the person of the other.

24 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, XI to read as follows:

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

28 4 Effective Date. This act shall take effect January 1, 2023.

**HB 1392-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to penalties for nonviolent drug offenses and repealing the criminal penalties for possession of drug paraphernalia.

FISCAL IMPACT: ☒ State ☒ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
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 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 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