

HB 328-FN - AS INTRODUCED

2023 SESSION

23-0238

04/10

HOUSE BILL **328-FN**

AN ACT an act legalizing certain controlled substances for persons 21 years of age or older.

SPONSORS: Rep. Verville, Rock. 2

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill legalizes the possession and use of lysergic acid diethylamide (LSD), mescaline, psilocybin, and peyote 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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 certain controlled substances for persons 21 years of age or older.

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

1 1 Controlled Drug Act; Acts Prohibited. Amend RSA 318-B:2, XII to read as follows:

2 XII. A person is a drug enterprise leader if he conspires with one or more persons as an
3 organizer, supervisor, financier, or manager to engage for profit in a scheme or course of conduct to
4 unlawfully manufacture, sell, prescribe, administer, dispense, bring with or transport in this state
5 methamphetamine, [~~lysergic acid diethylamide,~~] phencyclidine (PCP) or any controlled drug
6 classified in schedule I or II, or any controlled drug analog thereof. A conviction as a drug enterprise
7 leader shall not merge with the conviction for any offense which is the object of the conspiracy.
8 Nothing in this section shall be construed to preclude or limit a prosecution or conviction of any
9 person for conspiracy or any other offense defined in this chapter.

10 2 New Paragraph; Controlled Drug Act; Acts Prohibited. Amend RSA 318-B:2 by inserting after
11 paragraph XVI the following new paragraph:

12 XVII. The possession or use of a hallucinogenic drug by a person 21 years of age or older
13 shall not be an offense under this chapter.

14 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(a)(2) to read as follows:

15 (2) ***In the case of a person under 21 years of age***, lysergic acid diethylamide, or
16 its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or
17 phencyclidine (PCP), or its analog, in a quantity of 10 grams or more including any adulterants or
18 dilutants.

19 4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(b)(3) to read as follows:

20 (3) ***In the case of a person under 21 years of age***, lysergic acid diethylamide, or
21 its analog, in a quantity of less than 100 milligrams including any adulterants or dilutants, or where
22 the amount is undetermined, or phencyclidine (PCP) or its analog, in a quantity of less than 10
23 grams, including any adulterants or dilutants, or where the amount is undetermined;

24 5 Effective Date. This act shall take effect January 1, 2024.

HB 328-FN- FISCAL NOTE
AS INTRODUCED

AN ACT an act legalizing certain controlled substances 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	\$0	\$0	\$0
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 legalizes the possession and use of lysergic acid diethylamide (LSD), mescaline, psilocybin, and peyote 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
Complex Felony Case	\$3,195	\$3,244	\$3,366
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
Assigned Counsel - Supreme Court Appeal	\$125/Hour up to \$10,000	\$125/Hour up to \$10,000
The Judicial Council foresees no adverse fiscal impact from the proposed legislation as it relates to the delivery of legal services to indigent defendants in criminal cases. Legalization of this subset of controlled drugs would eliminate the need for legal representation in state criminal cases where possession of these substances was the only offense charged. Although there are data on drug possession cases generally, there is limited information for drug offenses charging the defendant with possession of one of the substances in the proposed bill. For example, in FY2021, the Public Defender opened 10 LSD possession cases. However, this number may not include cases where LSD was one of several drugs leading to criminal prosecution. Offenses for possessing mushrooms or psilocybin are not separately tracked by the Public Defender. Accordingly, while the legalization of these substances will result in reduced state prosecutions, the projected savings of the proposed legislation is indeterminable.		
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
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.		
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 Judicial Branch indicates in 2021, there was 1 case filed under RSA 318-B:26, I(a)(2) and 1 case filed under RSA 318-B:26, I(b)(3). The Branch does not track the number of cases filed that fall within the definition of hallucinogenic drug in RSA 318-B. The Branch assumes there would be fewer criminal cases filed in the courts. While the decrease in filings under RSA 318-B:26, I(a)(2) and RSA 318-B:26, I(b)(3) would be insignificant, the Branch is unable to estimate the total decrease in filings that would result under other provisions of RSA 318-B.

The Department of Justice indicates it would not be involved in prosecutions or investigations related to this bill and any appeals would be handled within the current budget. Therefore, there would be no impact to the Department.

AGENCIES CONTACTED:

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