

HB 473-FN - AS INTRODUCED

2023 SESSION

23-0551

04/08

HOUSE BILL ***473-FN***

AN ACT relative to penalties for controlled drug violations.

SPONSORS: Rep. Roy, Rock. 31; Rep. Hynes, Hills. 2; Rep. Yokela, Rock. 32

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill changes the penalty for certain schedule I, II, III, and IV drug offenses.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 relative to penalties for controlled drug violations.

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

- 1 1 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(a) to read as follows:
- 2 (a) In the case of a controlled drug or its analog, classified in schedules I, II, III, or IV,
- 3 other than those specifically covered in this section, the person shall be guilty of a ~~[class B felony,~~
- 4 ~~except that]~~ ***misdemeanor for a first offense*** ~~[notwithstanding the provisions of RSA 651:2, IV(a),~~
- 5 ~~a fine of not more than \$25,000 may be imposed]~~. If any person commits such a violation after one or
- 6 more prior offenses as defined in RSA 318-B:27, such person shall be guilty of a ~~[class A]~~ ***class B***
- 7 ~~felony[, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of up to \$50,000 may~~
- 8 ~~be imposed]~~.
- 9 2 Effective Date. This act shall take effect January 1, 2024.

**HB 473-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to penalties for controlled drug violations.

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 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 changes the penalty for certain schedule I, II, III, and IV drug offenses. 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 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
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.		
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

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