

HB 1539-FN - AS INTRODUCED

2024 SESSION

24-2532
09/08

HOUSE BILL

1539-FN

AN ACT relative to annulling, resentencing, or discontinuing prosecution of certain cannabis offenses.

SPONSORS: Rep. Wheeler, Hills. 33; Rep. A. Murray, Hills. 20; Rep. H. Howard, Straf. 4; Rep. Monteil, Ches. 15

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill allows for additional annulments, resentencings, or discontinuations of prosecutions for certain cannabis 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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Four

AN ACT relative to annulling, resentencing, or discontinuing prosecution of certain cannabis offenses.

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

1 1 Criminal Code; Sentences; General Provisions; Annulment of Arrests and Convictions for
2 Marijuana Possession. Amend RSA 651:5-b to read as follows:

3 651:5-b Annulment of Arrests and Convictions for Marijuana Possession.

4 ***I. In this section:***

5 (a) “Cannabis” means “marijuana” as defined in RSA 318-B:2-c.

6 (b) “Possession limit” means whichever of the following quantities is greater:

7 (1) Two ounces of cannabis and 5 grams of hashish, or

8 (2) An amount of cannabis that is legal under New Hampshire law for
9 adults 21 and older to possess.

10 (c) “Cannabis-related offense” means any of the following:

11 (1) Any offense under RSA 318-B involving cannabis or paraphernalia
12 intended for cannabis; and

13 (2) Any other offense that would not have been an offense were it not for the
14 illegality of cannabis.

15 ***II.*** Any person who was arrested or convicted for knowingly or purposely obtaining,
16 purchasing, transporting, or possessing, actually or constructively, or having under his or her
17 control, [~~3/4 of an ounce~~] ***no more than the possession limit*** of marijuana [~~or less~~] where the
18 offense occurred before [~~September 16, 2017~~] ***July 1, 2024*** may, at any time, petition the court in
19 which the person was convicted or arrested to annul the arrest record, court record, or both. The
20 petition shall state that the amount of marijuana was [~~3/4 of an ounce or less~~] ***no more than the***
21 ***possession limit***. The petitioner shall furnish a copy of the petition to the office of the prosecutor of
22 the underlying offense. The prosecutor may object within 10 days of receiving a copy of the petition
23 and request a hearing. If the prosecutor does not object within 10 days, the court shall grant the
24 petition for annulment. If the prosecutor timely objects, the court shall hold a hearing. In a hearing
25 on the petition for annulment, the prosecutor shall be required to prove beyond a reasonable doubt
26 that the petitioner knowingly or purposely obtained, purchased, transported, or possessed, actually
27 or constructively, or had under his or her control, marijuana in an amount exceeding [~~3/4 of an~~
28 ~~ounce~~] ***the possession limit***. At the close of the hearing, the court shall grant the petition unless
29 the prosecutor has proven that the amount of marijuana exceeded [~~3/4 of an ounce~~] ***the possession***

1 *limit.* If the petition is granted, and an order of annulment is entered, the provisions of RSA 651:5,
2 X-XI shall apply to the petitioner.

3 *III.(a) Any person who was arrested or convicted for any cannabis-related offense*
4 *may, at any time, petition the court in which the person was convicted or arrested to annul*
5 *the arrest record, court record, or both, when the petitioner has completed the sentence.*
6 *The petition shall state that the arrest or conviction was for a cannabis-related offense.*

7 *(b) The court shall furnish a copy of the petition to the office of the prosecutor of*
8 *the underlying offense. The prosecutor may object within 14 days of receiving a copy of the*
9 *petition and request a hearing. If the prosecutor does not object within 14 days, the court*
10 *shall grant the petition for annulment.*

11 *(c) If the prosecutor timely objects, the court shall hold a hearing. In a hearing*
12 *on the petition for annulment, the prosecutor shall be required to prove by clear and*
13 *convincing evidence that:*

14 *(1) The offense is not eligible for annulment under this section because it*
15 *was not a cannabis-related offense;*

16 *(2) The offense is not eligible for annulment under this section because the*
17 *petitioner has not completed the sentence; or*

18 *(3) Annulment would not be in the interests of justice.*

19 *(d) The court shall grant the petition unless the prosecutor has proven that:*

20 *(1) The offense is not eligible for annulment under this section because it*
21 *was not a cannabis-related offense;*

22 *(2) The offense is not eligible for annulment under this section because the*
23 *petitioner has not completed the sentence; or*

24 *(3) Annulment would not be in the interests of justice.*

25 *(e) There shall be a presumption that granting the petition would be in the*
26 *interests of justice due to the decriminalization or legalization of cannabis for adults and*
27 *the unequal enforcement of cannabis laws. The presumption may be overcome by evidence*
28 *that the annulment would not be in the interests of justice, including in instances where*
29 *the offense was recent and involved:*

30 *(1) An adult distributing cannabis to a minor or using a minor to sell*
31 *cannabis; or*

32 *(2) A conviction under RSA 318-B:2-e for negligently storing marijuana-*
33 *infused products, causing a minor to access them.*

34 *IV. If the petition is granted, and an order of annulment is entered, the provisions*
35 *of RSA 651:5, X-XI shall apply to the petitioner.*

36 *V. All fees shall be waived.*

2 New Sections; Criminal Code; Sentences; General Provisions; Cannabis Convictions and Sentences. Amend RSA 651 by inserting after section 5-b the following new sections:

651:5-c Annulment of Certain Arrests and Convictions for Cannabis.

I. All convictions and arrests for misdemeanor or violation level offenses for possession of cannabis shall be automatically annulled. Within 6 months of the effective date of this section, the department of safety shall remove any such qualified convictions from its records and notify the court from which the case originated, which shall place an order of annulment in the court file and thereafter process the file in the same manner as any other annulled case. Any person who believes that he or she is eligible for automatic annulment may request that the department of safety examine his or her conviction to determine whether it should be annulled. Should the department of safety fail to annul a qualified conviction, any person so aggrieved may petition the court without fee for further review of eligibility.

II. Eligible annulments of convictions and civil adjudications pursuant to this section shall be granted notwithstanding the existence of outstanding court-imposed or court-related fees, fines, costs, assessments, or charges.

651:5-d Re-Sentencing for Cannabis Sentences.

I. As used in this section:

(a) "Cannabis" means "marijuana" as defined in RSA 318-B:2-c.

(b) "Cannabis-related offense" means any of the following:

(1) Any offense under RSA 318-B involving cannabis or paraphernalia intended for cannabis; and

(2) Any other offense that would not have been an offense were it not for the illegality of cannabis.

II.(a) No later than 90 days after the effective date of this section, the department of corrections and the superintendent of each county house of correction shall conduct a search to determine all individuals serving a period of incarceration or supervision for a violation of RSA 318-B involving cannabis or paraphernalia intended for cannabis, or any other cannabis-related offense and notify the court in which each person was convicted and the judicial branch, administrative office of the courts.

(b) Any person who was convicted of any cannabis-related offense who has not completed the sentence may, at any time, petition the court in which the person was convicted for re-sentencing.

(c) The court in which the person was convicted shall furnish a copy of the petition to the office of the prosecutor of the underlying offense. The prosecutor may object within 14 days of receiving a copy of the petition and request a hearing. If the prosecutor does not object within 14 days, the court shall grant the petition and re-sentence the person to the portion of the sentence the individual has already completed.

(d) If the prosecutor timely objects, the court shall hold a hearing. In a hearing on the petition for re-sentencing, the prosecutor shall be required to prove by clear and convincing evidence that:

(1) The offense is not eligible for re-sentencing under this section because it was not a cannabis-related offense;

(2) Re-sentencing would not be in the interests of justice; or

(3) Re-sentencing would be in the interests of justice, but that the appropriate sentence is something other than the portion of the sentence the individual has already completed.

(e) The court shall grant the petition and re-sentence the individual to any sentence he or she has already completed unless the prosecutor has proven that:

(1) The offense is not eligible for re-sentencing under this section because it was not a cannabis-related offense;

(2) Re-sentencing would not be in the interests of justice; or

(3) Re-sentencing would be in the interests of justice, but that the appropriate sentence is something other than the portion of the sentence the individual has already completed.

(f) There shall be a presumption that granting the petition would be in the interests of justice due to the decriminalization or legalization of cannabis for adults and the unequal enforcement of cannabis laws. The presumption may be overcome, including in instances where the prosecutor proves by clear and convincing evidence that re-sentencing would not be in the interests of justice because:

(1) Additional, more serious charges unrelated to cannabis were dismissed as part of a plea deal; or

(2) The offense involved distribution of marijuana to a minor, using a minor to distribute marijuana, or a violation of RSA 318-B:2-e for negligently storing marijuana-infused products, causing a minor to access them.

(g) The court may find that re-sentencing is in the interests of justice, but that a complete reduction in the sentence is not in the interests of justice. In those instances, the court shall re-sentence the individual to the lowest sentence that is in the interests of justice, in light of the decriminalization or legalization of cannabis and disparities in arrests and sentencing.

(h) A court may not increase any aspect of a sentence in response to a re-sentencing petition filed pursuant to this section.

(i) Any person eligible for re-sentencing for cannabis sentences pursuant to this section may file a petition for the assistance of counsel without charge; however, if such person was found to be indigent at his original sentencing, that person shall be entitled to assistance of counsel without charge for the hearing on modification of his sentence without the filing of such petition. No fee shall be charged for filing a petition under this section.

HB 1539-FN - AS INTRODUCED
- Page 5 -

I. As used in this section:

(a) “Cannabis” means “cannabis” as defined in RSA 651:5-b, I(a).

(b) “Possession limit” means “possession limit” as defined in RSA 651:5-b, I(b).

II.(a) Except to the extent required to dismiss, withdraw, or terminate the charge, no prosecutor shall pursue any charge based on crimes or offenses pending with a court that occurred prior to July 1, 2024, involving a person 21 years of age or older knowingly or purposely obtaining, purchasing, transporting, or possessing, actually or constructively, or having under his or her control, no more than the possession limit of cannabis where the offense occurred before July 1, 2024.

(b) The existence of convictions in other counts within the same case that are not eligible for dismissal pursuant to this section or other applicable laws shall not prevent any conviction otherwise eligible for dismissal under this section from being dismissed pursuant to this section.

III. On November 15, 2024, any guilty verdict, plea, placement in a diversionary program, or other entry of guilt on a matter that was entered prior to that effective date, but the judgment of conviction or final disposition on the matter was not entered prior to that date, and the guilty verdict, plea, placement in a diversionary program, or other entry of guilt solely involved one or more crimes or offenses involving a person 21 years of age or older knowingly or purposely obtaining, purchasing, transporting, manufacturing or possessing, actually or constructively, or having under his or her control, no more than the possession limit of cannabis, shall be vacated by operation of law. The judicial branch, in consultation with the attorney general, may take any administrative action as may be necessary to vacate the guilty verdict, plea, placement in a diversionary program, or other entry of guilt.

3 Effective Date. This act shall take effect upon its passage.

HB 1539-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to annulling, resentencing, or discontinuing prosecution of certain cannabis offenses.

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

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General Fund			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill allows for additional annulments, resentencings, or discontinuations of prosecutions for certain cannabis offenses.

The Department of Corrections states the fiscal impact of this bill is indeterminable as it cannot predict the number of individuals that would be affected by the bill. Currently, the Department collects \$100 for annulment investigations. This bill would waive any fees for such investigations. The Department estimates it could take thirty minutes on average per annulment investigation, although time will vary based on the case. The hourly cost for staff completing the investigation would be \$63.52 (LG 28 step 5 is @ \$47.78 plus benefits of \$15.74).

Staff will likely have to conduct these on overtime which would increase the hourly cost to \$95.28.

The Department of Safety indicates the fiscal impact of this bill is indeterminable, however it anticipates the financial impact will be significant. The bill calls for additional hearings to determine if it is appropriate to annul or resentence previously prosecuted offenses. These hearings would require a significant amount of research and preparation for Department of Safety prosecutors, troopers, and other staff. The number of hours that the Department's employees would spend on the additional hearings is impossible to predict.

The Judicial Branch states it is not possible to estimate how this change in law would impact the number of filings in the courts. It is possible that there would be an increase in petitioners for the proposed relief.

The New Hampshire Association of Counties states county attorney offices would likely see an increase in expenditure to address the petitions and prosecutor objections to an annulment or resentencing. County correctional facilities would also incur additional costs in evaluating who would be eligible.

It is assumed that any fiscal impact would occur after FY 2024.

AGENCIES CONTACTED:

Departments of Corrections and Safety, and Judicial Branch