

HB 618-FN - AS AMENDED BY THE HOUSE

11Mar2015... 0699h

2015 SESSION

15-0029
04/01

HOUSE BILL **618-FN**

AN ACT relative to penalties for the possession of marijuana.

SPONSORS: Rep. Schroadter, Rock 17; Rep. Lachance, Hills 8; Rep. C. McGuire, Merr 29;
Rep. Murphy, Hills 7; Rep. Simmons, Hills 17; Rep. Beaulieu, Hills 45; Rep. Kaen,
Straf 5; Rep. Phillips, Ches 16

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill reduces the penalty for possession of one ounce or less of marijuana to a violation, and reduces the penalty for possession of other amounts of marijuana.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to penalties for the possession of marijuana.

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

1 1 New Sections; Controlled Drug Act; Personal Possession of Marijuana. Amend RSA 318-B by
2 inserting after section 2-b the following new sections:

3 318-B:2-c Personal Possession of Marijuana.

4 I. Except as provided in RSA 126-X, any person possessing 1/2 ounce or less of marijuana,
5 including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided
6 in paragraph III.

7 II. Except as provided in RSA 126-X, any person possessing 5 grams or less of hashish,
8 including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided
9 in paragraph III.

10 III.(a) Any person 18 years of age or older who is convicted of violating paragraph I or II
11 shall be subject to a fine of \$100 for a first offense, a fine of \$200 for a second offense under this
12 subparagraph, and a fine of \$500 for a third or subsequent offense under this subparagraph, and
13 shall forfeit the marijuana or hashish to the state.

14 (b) Any person under 18 years of age who is convicted of violating paragraph I or II shall
15 forfeit the marijuana or hashish. The offender's parents or legal guardians shall be notified of the
16 offense. The court may order the offender to participate in up to 35 hours of community service,
17 which shall be completed within one year of the date of the offense. Further, the court may order the
18 offender to complete an alcohol and substance abuse education program that has been approved by
19 the department of health and human services, at the offender's expense, within one year of the date
20 of the offense. The offender shall furnish the court with evidence of completion of both an approved
21 alcohol and substance abuse education program and community service. An offender who fails to
22 complete an alcohol and substance abuse education program or community service requirement as
23 ordered may be subject to an additional fine of up to \$350.

24 (c) Any person who is not yet 21 years of age on the date of the incident, who is convicted
25 of an offense under paragraph I or II may, at the discretion of the court, be subject to the revocation
26 or denial of a driver's license or privilege to drive for not more than one year on the first finding or
27 conviction under this paragraph, and not more than 2 years for a subsequent finding or conviction.
28 Nothing in this paragraph shall prevent the court from requiring any person subject to this
29 provisions to successfully complete a substance abuse education program in lieu of a loss or denial of
30 driving license or privilege. The director, upon receipt of a notification from the court that the court

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1 has ordered the suspension of a person's license or driving privilege pursuant to this paragraph,
2 shall issue a formal order of suspension and, in the case of denial of an application for a license, the
3 period imposed shall begin on the date the person is eligible by age for the issuance of a license.
4 Notwithstanding any other law regarding confidentiality, any court which convicts or makes a
5 finding that an offense described in this paragraph has occurred involving a person who meets the
6 age limits specified in this paragraph, and which orders the revocation or denial of a driver's license
7 or privilege to drive, shall forward a notice of such conviction or finding to the director. The director
8 shall maintain the confidentiality of notices received.

9 (d) The director shall, when ordered by the court, revoke the driver's license or privilege
10 to drive or deny an application for a license for not more than one year on the first finding or
11 conviction under paragraph I or II, and not more than 2 years for a subsequent finding or conviction;
12 provided, however, that the director shall not revoke or deny a license or privilege to drive under this
13 paragraph without first giving the person an opportunity for a hearing to determine that the person
14 is the individual who was convicted of the offense and against whom the court order applies. In the
15 case of denial of an application for a license, the period imposed shall begin on the date the person is
16 eligible by age for the issuance of a license. This section shall only apply to a person who is not yet
17 21 years of age.

18 IV. Except as otherwise provided in this paragraph:

19 (a) No record of a violation of this section shall be recorded in any publicly available
20 database of criminal offenders.

21 (b) No record that includes personally identifiable information resulting from a violation
22 of this section shall be made accessible to the public, federal agencies, or agencies from other states
23 or countries.

24 (c) Every state, county, or local law enforcement agency that collects and reports data for
25 the Uniform Crime Report program shall collect data on the number of violations of paragraphs I or
26 II. The data collected pursuant to this paragraph shall be available free of cost to the public. A law
27 enforcement agency shall update the data annually and shall make this data available on the
28 agency's public Internet website.

29 V.(a) Except as provided in this section, no person shall be subject to arrest for a violation of
30 paragraph I or II and shall be released on a hand summons, provided the law enforcement officer
31 does not have lawful grounds for arrest for a different offense.

32 (b) Any person in possession of an identification card, license, or other form of
33 identification issued by the state or any state, country, city, or town, or any college or university, who
34 fails to produce the same upon request of a police officer who informs the person that he or she has
35 been found to be in possession of what appears to the officer to be an ounce or less of marijuana or 5
36 grams or less of hashish, may be arrested for a violation of paragraph I or II.

37 (c) Any person who fails to produce a form of identification provided for in subparagraph

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1 (b) may be arrested for a violation of paragraph I or II if the person fails or refuses to truthfully
2 provide his or her name, address, and date of birth to a police officer who has informed such person
3 that he or she has been found in possession of what appears to the officer to be an ounce or less of
4 marijuana or 5 grams or less of hashish.

5 (a) Except as specifically provided in RSA 263:56-b, III and IV, neither the state nor any
6 of its political subdivisions shall impose any form of penalty on a person for possessing 1/2 ounce or
7 less of marijuana, 5 grams or less of hashish, or paraphernalia for marijuana use, nor shall any
8 penalties or obligations exceeding those outlined in RSA 263:56-b, III or IV be imposed by the state
9 nor any of its political subdivisions solely for having cannabinoids or cannabinoid metabolites in the
10 urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the human body.

11 (b) Possession of 1/2 ounce or less of marijuana, possession of 5 grams or less of hashish,
12 possession of paraphernalia for marijuana use, or the presence of cannabinoids or cannabinoid
13 metabolites in the urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the
14 human body shall not constitute grounds for denying a person student financial aid, public housing,
15 or any form of public financial assistance including unemployment benefits, or denying a person the
16 right to operate a motor vehicle, or disqualifying a person from serving as a foster parent or adoptive
17 parent.

18 (c) This paragraph shall not be construed to prohibit a law enforcement agency from
19 investigating or charging a person for a violation of RSA 265-A.

20 318-B:2-d Plea by Mail.

21 I. Any person 18 years of age or older who is charged with a violation of RSA 318-B:2-c, I or
22 II may enter a plea of guilty, nolo contendere, or not guilty, by mail in a circuit court, district
23 division.

24 II. Such defendant shall receive, in addition to the summons, a fine notice entitled "Notice of
25 Fine" which shall contain the amount of the fine for a violation of RSA 318-B:2-c, I or II. A
26 defendant who is issued a summons and notice of fine and who wishes to plead guilty or nolo
27 contendere shall enter his or her plea on the summons and return it with payment of the fine within
28 30 days of the date of the summons. Payment by credit card may be accepted in lieu of cash
29 payment.

30 III. If the defendant wishes to enter a plea of not guilty, he or she shall enter such plea on
31 the summons and return it within 30 days of the date of the summons. The circuit court, district
32 division shall schedule a trial.

33 IV. Whenever a defendant does not enter a plea by mail within 30 days of the date of the
34 summons, the defendant shall be defaulted and shall be subject to an additional \$100 fine.

35 V. Whenever a defendant willfully fails to pay a fine in connection with a conviction for a
36 violation of RSA 318-B:2-c, I or II, or payment of such fine is uncollectible, the defendant shall be
37 defaulted and the court may impose an additional fine of \$100.

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

(b) In the case of a violation involving any of the following, a person may be sentenced to a maximum term of imprisonment of not more than 20 years, a fine of not more than \$300,000, 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 term of imprisonment of not more than 40 years, a fine of not more than \$500,000, or both:

(1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other than crack cocaine, in a quantity of 1/2 ounce or more, including any adulterants or dilutants;

(2) A substance classified in schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of one ounce or more including any adulterants or dilutants;

(3) Lysergic acid diethylamide, or its analog, in a quantity of less than 100 milligrams including any adulterants or dilutants, or where the amount is undetermined, or phencyclidine (PCP) or its analog, in a quantity of less than 10 grams, including any adulterants or dilutants, or where the amount is undetermined;

(4) Heroin or its analog or crack cocaine in a quantity of one gram or more, including any adulterants or dilutants;

(5) Methamphetamine or its analog, in a quantity of one ounce or more including any adulterants or dilutants;

(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.

(c) In the case of a violation involving any of the following, a person may be sentenced to a maximum term of imprisonment of not more than 7 years, a fine of not more than \$100,000, 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 15 years, a fine of not more than \$200,000, or both:

(1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other than crack cocaine, in a quantity less than 1/2 ounce including any adulterants or dilutants;

(2) A substance or mixture classified as a narcotic drug in schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of less than one ounce including any adulterants or dilutants;

(3) Methamphetamine, or its analog in a quantity of less than one ounce including any adulterants or dilutants;

(4) Heroin or its analog or crack cocaine in a quantity of less than one gram, including any adulterants or dilutants;

(5) Marijuana in a quantity of ~~[one ounce]~~ **5 pounds** or more including any

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1 adulterants or dilutants, or hashish in a quantity of [~~5 grams~~] **one pound** or more including any
2 adulterants or dilutants;

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

4 (7) Any other controlled drug or its analog, other than those specifically covered in
5 this section, classified in schedules I, II, III or IV.

6 (d) In the case of a violation involving any of the following, a person may be sentenced to
7 a maximum term of imprisonment of not more than 3 years, a fine of not more than \$25,000, or both.
8 If any person commits such a violation after one or more prior offenses as defined in RSA 318-B:27,
9 such person may be sentenced to a maximum term of imprisonment of not more than 6 years, a fine
10 of not more than \$50,000, or both:

11 (1) Marijuana in a quantity of [~~less~~] **more** than one ounce including any adulterants
12 or dilutants, or hashish in a quantity of [~~less~~] **more** than 5 grams including any adulterants or
13 dilutants;

14 (2) Any schedule V substance or its analog.

15 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II to read as follows:

16 II. Any person who knowingly or purposely obtains, purchases, transports, or possesses
17 actually or constructively, or has under his or her control, any controlled drug or controlled drug
18 analog, or any preparation containing a controlled drug or controlled drug analog, except as
19 authorized in this chapter, shall be sentenced as follows, except as otherwise provided in this section:

20 (a) In the case of a controlled drug or its analog, classified in schedules I, II, III or IV,
21 other than those specifically covered in this section, the person shall be guilty of a class B felony,
22 except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may
23 be imposed. If any person commits such a violation after one or more prior offenses as defined in
24 RSA 318-B:27, such person shall be guilty of a class A felony, except that notwithstanding the
25 provisions of RSA 651:2, IV(a), a fine of up to \$50,000 may be imposed[;].

26 (b) In the case of a controlled drug or its analog classified in schedule V, the person shall
27 be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more than
28 \$15,000, or both. If a person commits any such violation after one or more prior offenses as defined
29 in RSA 318-B:27, such person shall be guilty of a class B felony, except that notwithstanding the
30 provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be imposed[;].

31 (c) [~~In the case of more than 5 grams of hashish, the person shall be guilty of a~~
32 ~~misdemeanor, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more~~
33 ~~than \$5,000 may be imposed.~~

34 (d) In the case of **more than one ounce** of marijuana, including any adulterants or
35 dilutants, or **more than 5 grams** or less of hashish, the person shall be guilty of a class A
36 misdemeanor.

37 (d) **In the case of one ounce or less of marijuana, including any adulterants or**

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1 *dilutants, or 5 grams or less of hashish, including adulterants or dilutants, the person*
2 *shall be guilty of a violation pursuant to RSA 318-B:2-c.*

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

4 (a) ***Except as provided in RSA 318-B:2-c***, controls any premises or vehicle where he
5 knows a controlled drug or its analog is illegally kept or deposited;

6 5 Other Alcohol or Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as follows:

7 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly
8 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug
9 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her
10 license shall be revoked or his or her right to drive denied for a period of 60 days and at the
11 discretion of the court for a period not to exceed 2 years. ***This section shall not apply to***
12 ***possession of marijuana or hashish as provided in RSA 318-B:2-c.***

13 6 Effective Date. This act shall take effect January 1, 2016.

LBAO
15-0029
Amended 03/20/15

HB 618-FN FISCAL NOTE

AN ACT relative to penalties for the possession of marijuana.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as amended by the House (Amendment #2015-0699h)**, as it is awaiting information from the Judicial Branch, Judicial Council, Department of Corrections, and New Hampshire Association of Counties. When completed, the fiscal note will be forwarded to the House Clerk's Office.