# Bill as Introduced

# HB 1699-FN – AS INTRODUCED

2012 SESSION

12-2159
03/04

HOUSE BILL ***1699-FN***

AN ACT relative to driving under the influence of drugs.

SPONSORS: Rep. Holden, Hills 4; Rep. O'Brien, Hills 4; Sen. White, Dist 9

COMMITTEE: Criminal Justice and Public Safety

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## ANALYSIS

This bill changes the prohibition on driving under the influence of a controlled drug to driving under the influence of a chemical substance, natural or synthetic, or its metabolites.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

12-2159
03/04

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to driving under the influence of drugs.

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

1 Chemical Substance. Amend RSA 261:180, III to read as follows:

III. The commissioner, when suspending a driver's license or privilege to drive because the driver is an habitual offender or has been convicted of negligent homicide involving the use of a motor vehicle, manslaughter involving the use of a motor vehicle, a subsequent offense of driving or attempting to drive under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** under RSA 265-A:2, I, or aggravated driving while intoxicated or attempted aggravated driving while intoxicated under RSA 265-A:3, shall also revoke the registration of any vehicle registered to the individual whose license is being revoked or suspended, for the period of revocation or suspension of the license or privilege to drive.

2 Chemical Substance. Amend RSA 265-A:2 to read as follows:

265-A:2 Driving or Operating Under Influence of Drugs or Liquor; Driving or Operating With Excess Alcohol Concentration.

I. No person shall drive or attempt to drive a vehicle upon any way or operate or attempt to operate an OHRV:

(a) While such person is under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** or any combination of intoxicating liquor and [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites***; or

(b) While such person has an alcohol concentration of 0.08 or more or in the case of a person under the age of 21, 0.02 or more.

II. No person shall operate or attempt to operate a boat while under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** or any combination of intoxicating liquor and a [~~controlled drug or drugs~~] ***chemical substance or substances, natural or synthetic, or their metabolites***, or while such person has an alcohol concentration of 0.08 or more or in the case of persons under the age of 21, 0.02 or more.

3 Chemical Substance. Amend the introductory paragraph of RSA 265-A:3, I to read as follows:

I. While under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** or any combination of intoxicating liquor and [~~controlled drug or drugs~~] ***chemical substance or substances, natural or synthetic, or their metabolites*** and, at the time alleged:

4 Chemical Substance. Amend RSA 265-A:4 to read as follows:

265-A:4 Implied Consent of Driver or Operator to Submit to Testing to Determine Alcohol Concentration. Any person who drives, operates, or attempts to operate an OHRV, drives or attempts to drive a vehicle upon the ways of this state, or operates or attempts to operate a boat upon the public waters of the state shall be deemed to have given consent to physical tests and examinations for the purpose of determining whether such person is under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites***, and to a chemical, infrared molecular absorption, or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath, for the purpose of determining the [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** content of such person's blood or alcohol concentration if arrested for any offense arising out of acts alleged to have been committed while the person was driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites*** or while having an alcohol concentration in excess of the statutory limits contained in RSA 265-A:2 or RSA 265-A:3. The test or tests shall be administered at the direction of a law enforcement officer, peace officer, or authorized agent having reasonable grounds to believe the person to have been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving or in actual physical control of a vehicle, or operating or in actual physical control of a boat while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites*** or while having an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21, 0.02 or more. A copy of the report of any such test shall be furnished by the law enforcement agency to the person tested within 48 hours of receipt of the report by the agency by certified mail directed to the address shown on such person's license or other identification furnished by the person. Results of a test of the breath shall be furnished immediately in writing to the person tested by the certified breath testing operator conducting the test. When the incident involves an accident resulting in death or serious bodily injury to any person as provided in RSA 265-A:16, the prerequisites of RSA 265-A:8 shall not apply. Properly trained personnel of the United States Coast Guard may arrest and conduct tests on persons who are believed to be under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites***, or a combination thereof, and who are in physical control of a boat operating upon the public coastal waters of this state.

5 Chemical Substance. Amend RSA 265-A:5, II to read as follows:

II. All such blood and urine tests made under the direction of a law enforcement officer, authorized agent, or peace officer shall be conducted in the forensic science laboratory of the department of safety established in RSA 106-B:2-a or, in the case of blood and urine samples to be tested for the presence of [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their***

***metabolites***, in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended.

6 Chemical Substance. Amend RSA 265-A:5, V(a) to read as follows:

(a) Methods and procedures for the testing of blood, urine, and breath to determine alcohol concentration and [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** content of a person's blood;

7 Chemical Substance. Amend RSA 265-A:9 to read as follows:

265-A:9 Effect of Evidence of Alcohol Concentration Test. The provisions of this subdivision do not limit the introduction of any other competent evidence bearing on the question of whether a person charged with the violation of RSA 265-A:2, I(a), or RSA 265-A:3, I, was under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites.***

8 Chemical Substance. Amend RSA 265-A:10 to read as follows:

265-A:10 Effect of Evidence of Refusal to Take Alcohol Concentration Test. If a person refuses to submit to a test as provided in RSA 265-A:4, such refusal may be admissible into evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by that person while driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites***.

9 Chemical Substance. Amend RSA 265-A:11 to read as follows:

265-A:11 Evidence.

I. Upon complaint, information, indictment, or trial of any person charged with the violation of RSA 265-A:2, the court may admit evidence of physical testing of the defendant for being under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites*** as provided in RSA 265-A:4, and of the [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** content of the defendant's blood and the defendant's alcohol concentration, as shown by a test of his or her breath, blood, or urine as provided in RSA 265-A:4. Evidence that there was, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor. Evidence that there was, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence but is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more is prima facie evidence that the defendant was under the influence of intoxicating liquor. In addition, evidence that there was, at

the time alleged, an alcohol concentration of 0.08 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:2, I(b) of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:2, I(b); and evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, II of driving or attempting to drive a vehicle upon a way and of one or more of the circumstances specified in RSA 265-A:3, II (a), (b), (c), and (d) constitute a separate offense under RSA 265-A:3, II; and evidence that there was, at the time alleged, an alcohol concentration of 0.16 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, III of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:3, III.

II. Upon complaint, information, indictment, or trial of any person charged with a violation of the provisions of RSA 265-A:2, II relative to the operation of boats by a person under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites***, the court may admit evidence of the defendant's alcohol concentration at the time alleged, as shown by a chemical, infrared molecular absorption, or gas chromatograph test or tests of his or her breath, urine, or blood. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more, is prima facie evidence that the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence and may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

10 Chemical Substance. Amend RSA 265-A:12, V to read as follows:

V. Any person who is arraigned on a charge arising under RSA 265-A:2, RSA 265-A:3, or RSA 265-A:43 shall file, within 10 days of such person's receipt of the results of any toxicology test administered to such person for the presence of any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites***, a notice in said court requiring the attendance of the certifying scientist. Failure to file notice shall be deemed a waiver to require attendance of the certifying scientist at trial. The official report of the test issued pursuant to RSA 265-A:4 shall be deemed conclusive evidence of the conduct of the result of such test.

11 Chemical Substance. Amend RSA 265-A:14, IV(a) to read as follows:

(a) That the authorized agent or peace officer had reasonable grounds to believe the arrested person had been operating, had been attempting to operate, or was in actual physical control of a boat upon the public waters of this state while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites*** or any combination thereof;

12 Chemical Substance. Amend RSA 265-A:15, I to read as follows:

I. Any law enforcement officer, authorized agent, or peace officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat upon the public waters of the state while under the influence of intoxicating liquor or [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** or while the person's alcohol concentration was 0.08 or more or in the case of a person under the age of 21, 0.02 or more or in the case of a person licensed to operate and operating a commercial vehicle or operating a commercial vessel and licensed pursuant to RSA 270-E:22 at the time of the offense, 0.04 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of any test administered under this section may be introduced into evidence in a court for any relevant purpose. Failure to submit to the test shall not constitute a violation of this chapter. Evidence of a failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this subdivision, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 265-A:2, I(a), RSA 265-A:2, II, or RSA 265-A:3 was under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites***. Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The police officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The results of the test shall be furnished immediately to the person tested by the police officer administering the test and in writing, if requested.

13 Chemical Substance. Amend the introductory paragraph of RSA 265-A:16 to read as follows:

265-A:16 Blood Testing of Certain Motor Vehicle Fatalities. When a collision, boating accident, or OHRV accident results in death or serious bodily injury to any person, all drivers or operators involved, whether living or deceased, and all deceased vehicle, boat, or OHRV occupants and pedestrians involved shall be tested for evidence of alcohol or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites***. A law enforcement officer, authorized agent, or peace officer shall request a licensed physician, registered nurse, certified physician's assistant, or qualified medical technician or medical technologist to withdraw blood from each driver or operator involved if living and from the body of each deceased driver or operator, deceased occupant, or deceased pedestrian, in accordance with RSA 611-B:14, II, for the purpose of testing for evidence of alcohol content or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or***

***their metabolites***; provided that in the case of a living driver or operator the officer has probable cause to believe that the driver or operator caused the collision or accident. All tests made under this section shall be conducted by the forensic science laboratory established in RSA 106-B:2-a or in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended. A copy of the report of any such test shall be kept on file by the medical examiner. The filed report is not a public record under RSA 91-A. However, the report shall be made available to the following:

14 Chemical Substance. Amend RSA 265-A:17 to read as follows:

265-A:17 Arrest Without a Warrant. Notwithstanding any other statutory provision of law to the contrary, a law enforcement officer may, without a warrant, arrest any person involved in a traffic accident, OHRV accident, or boating accident when the officer has probable cause to believe that such person has committed an offense, an element of which is driving under the influence of intoxicating liquors, [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites*** or both. Notwithstanding any statutory provision of law to the contrary, a law enforcement officer may make such an arrest in such officer's own jurisdiction or on the property of any medical facility in another jurisdiction in this state where the person or others are taken for treatment for injuries suffered in such traffic accident.

15 Chemical Substance. Amend RSA 265-A:21, I to read as follows:

I. Notwithstanding the provisions of RSA 651:5, no court shall order an annulment of any record of conviction of driving or attempting to drive a vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat on the waters of this state while under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** or while having an alcohol concentration of 0.08 or more or of aggravated drunken driving until 10 years after the date of conviction. Any record thus annulled shall be retained in a permanent file, to be opened only for purposes of sentencing in the case of an offense under RSA 265-A:3.

16 Chemical Substance. Amend RSA 265-A:35, II to read as follows:

II. No holder of a probationary license shall drive or attempt to drive a vehicle upon any way when he or she is under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** or any combination of intoxicating liquor and [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites***, so that the alcohol concentration is 0.03 or more. Driving with an alcohol concentration of 0.03 or more is a per se violation of a probationary license and subjects the probationary license holder to administrative suspension of his or her driver's license for not less than 90 days and not more than 180 days. Such administrative suspension shall be in addition to any court imposed suspension or revocation periods.

17 Chemical Substance. Amend RSA 270:12-a, I(b) to read as follows:

(b) The provisions of RSA 265-A, relative to the operation or attempted operation of boats by a person under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic, or its metabolites*** or other unlawful operation of boats thereunder;

18 Chemical Substance. Amend RSA 651:6, II(b)-(c) to read as follows:

(b) Has previously been convicted of a violation of RSA 630:3, II, RSA 265-A:3, I(b) or II(b), or any crime in any other jurisdiction involving driving or attempting to drive a motor vehicle under the influence of [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites*** or intoxicating liquors, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b); or

(c) Has twice previously been convicted in this state or any other jurisdiction, for driving or attempting to drive a motor vehicle under the influence of intoxicating liquors or [~~controlled drugs~~] ***chemical substances, natural or synthetic, or their metabolites***, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b).

19 Effective Date. This act shall take effect January 1, 2013.

LBAO
12-2159.0
01/03/12

## HB 1699-FN - FISCAL NOTE

AN ACT relative to driving under the influence of drugs.

**FISCAL IMPACT:**

The Judicial Branch, Judicial Council, Department of Corrections, Department of Safety, New Hampshire Association of Counties, and New Hampshire Municipal Association state this bill will increase state, county, and local expenditures by an indeterminable amount in FY 2013 and each year thereafter. The Department of Safety states this bill will increase state revenue by an indeterminable amount in FY 2013 and each year thereafter. There is no fiscal impact on county and local revenue.

**METHODOLOGY:**

The Judicial Branch states the proposed bill would amend multiple sections of RSA Title 21, dealing with motor vehicles, and well as RSA 651:6, II(b)-(c), to change the prohibition of driving under the influence of a "controlled drug" to driving under the influence of a "chemical substance, natural or synthetic, or its metabolites." Expanding the offense from being under the influence of a "controlled drug" to a "chemical substance, natural or synthetic, or its metabolites" has the potential of adding many criminal prosecutions to the caseload of the Branch. The offenses involved include class B misdemeanors, class A misdemeanors, and class B felonies. The Branch also states the cases added to the caseload could involve longer trials than the norm because of the proof necessary to prove beyond a reasonable doubt that one was under the influence of a "chemical substance, natural or synthetic, or its metabolites," as opposed to a "controlled drug." The Branch has no information to estimate how many charges would be brought as a result of the changes contained in the bill to determine the fiscal impact on expenditures; however it has information on the cost for processing these cases. The Branch states a class A misdemeanor will cost $59.11 per case in FY 2013 and $61.31 per case in FY 2014 and each year thereafter, and a class B misdemeanor will cost $43.19 per case in FY 2013 and $44.54 per case in FY 2014 and each year thereafter. The Branch states the felony in this statute would be classified as an average routine felony and treated as an average routine criminal case in the Superior Court. The Branch states an average routine criminal case will cost $389.84 per case in FY 2013 and $401.48 per case in FY 2014 and each year thereafter. The Branch also states it cannot estimate what the increase in expenditures would be due to the increase in length of the average trial as a result of this bill. The possibility of appeals in all of these instances increases the likelihood the fiscal impact on the Branch will exceed $10,000.

The Judicial Council states this bill could drastically increase the number of cases which might be brought for impaired driving, which is an offense commonly committed by those eligible for indigent defense representation. To the extent individuals are charged under the bill and are found to be indigent, the Council states there will be indeterminable increase in general fund expenditures. The Council cannot predict the number of cases that may arise, but states if an individual is found to be indigent, the flat fees of $275 per misdemeanor and $756.25 per felony are charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is $60 per hour with caps of $1,400 for a misdemeanor and $4,100 for a felony. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is capped at $2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The Department of Justice states the criminal offense in this bill is typically prosecuted by the county attorney, and that any action required of the Department during any related appeals that may arise would most likely be undertaken within its existing budget.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2010 was $32,492. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2010 was $659.

The Department of Safety states this bill's broadening of the definition of what constitutes a drug for the purposes of 'driving under the influence' offenses may require the state police forensic laboratory personnel to undergo additional training, at an indeterminable cost, to enable them to identify the additional substances. The Department also states its bureau of hearings will also experience an increase in costs of an indeterminable amount due to the increase in administrative license suspension cases it predicts will arise as a result of this bill. Because this bill expands the actions that constitute a crime, the Department also estimates state revenues will increase by an indeterminable amount as a result of an increase in fine and penalty assessment revenue.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately $35,000. There is no impact on county revenue.

The New Hampshire Municipal Association states this bill may increase local expenditures by an amount it cannot estimate for additional enforcement and investigation costs, including the increase in laboratory costs associated with testing for a wider list of substances and the increase in the number of arrests performed by local law enforcement.

# Amendments

Rep. Holden, Hills. 4
January 5, 2012
2012-0115h
03/04

Amendment to HB 1699-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Chemical Substance. Amend RSA 261:180, III to read as follows:

III. The commissioner, when suspending a driver's license or privilege to drive because the driver is an habitual offender or has been convicted of negligent homicide involving the use of a motor vehicle, manslaughter involving the use of a motor vehicle, a subsequent offense of driving or attempting to drive under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** under RSA 265-A:2, I, or aggravated driving while intoxicated or attempted aggravated driving while intoxicated under RSA 265-A:3, shall also revoke the registration of any vehicle registered to the individual whose license is being revoked or suspended, for the period of revocation or suspension of the license or privilege to drive.

2 Chemical Substance. Amend RSA 265-A:2 to read as follows:

265-A:2 Driving or Operating Under Influence of Drugs or Liquor; Driving or Operating With Excess Alcohol Concentration.

I. No person shall drive or attempt to drive a vehicle upon any way or operate or attempt to operate an OHRV:

(a) While such person is under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and [~~controlled drugs~~] ***chemical substances, natural or synthetic***; or

(b) While such person has an alcohol concentration of 0.08 or more or in the case of a person under the age of 21, 0.02 or more.

II. No person shall operate or attempt to operate a boat while under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and a [~~controlled drug or drugs~~] ***chemical substance or substances, natural or synthetic***, or while such person has an alcohol concentration of 0.08 or more or in the case of persons under the age of 21, 0.02 or more.

3 Chemical Substance. Amend the introductory paragraph of RSA 265-A:3, I to read as follows:

I. While under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and [~~controlled drug or drugs~~] ***chemical substance or substances, natural or synthetic,*** and, at the time alleged:

4 Chemical Substance. Amend RSA 265-A:4 to read as follows:

265-A:4 Implied Consent of Driver or Operator to Submit to Testing to Determine Alcohol

Concentration. Any person who drives, operates, or attempts to operate an OHRV, drives or attempts to drive a vehicle upon the ways of this state, or operates or attempts to operate a boat upon the public waters of the state shall be deemed to have given consent to physical tests and examinations for the purpose of determining whether such person is under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic***, and to a chemical, infrared molecular absorption, or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath, for the purpose of determining the [~~controlled drug~~] ***chemical substance, natural or synthetic,*** content of such person's blood or alcohol concentration if arrested for any offense arising out of acts alleged to have been committed while the person was driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or while having an alcohol concentration in excess of the statutory limits contained in RSA 265-A:2 or RSA 265-A:3. The test or tests shall be administered at the direction of a law enforcement officer, peace officer, or authorized agent having reasonable grounds to believe the person to have been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving or in actual physical control of a vehicle, or operating or in actual physical control of a boat while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or while having an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21, 0.02 or more. A copy of the report of any such test shall be furnished by the law enforcement agency to the person tested within 48 hours of receipt of the report by the agency by certified mail directed to the address shown on such person's license or other identification furnished by the person. Results of a test of the breath shall be furnished immediately in writing to the person tested by the certified breath testing operator conducting the test. When the incident involves an accident resulting in death or serious bodily injury to any person as provided in RSA 265-A:16, the prerequisites of RSA 265-A:8 shall not apply. Properly trained personnel of the United States Coast Guard may arrest and conduct tests on persons who are believed to be under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic***, or a combination thereof, and who are in physical control of a boat operating upon the public coastal waters of this state.

5 Chemical Substance. Amend RSA 265-A:5, II to read as follows:

II. All such blood and urine tests made under the direction of a law enforcement officer, authorized agent, or peace officer shall be conducted in the forensic science laboratory of the department of safety established in RSA 106-B:2 a or, in the case of blood and urine samples to be tested for the presence of [~~controlled drugs~~] ***chemical substances, natural or synthetic***, in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services

under the Clinical Laboratory Improvement Act of 1988, as amended.

6 Chemical Substance. Amend RSA 265-A:5, V(a) to read as follows:

(a) Methods and procedures for the testing of blood, urine, and breath to determine alcohol concentration and [~~controlled drug~~] ***chemical substance, natural or synthetic,*** content of a person's blood;

7 Chemical Substance. Amend RSA 265-A:9 to read as follows:

265-A:9 Effect of Evidence of Alcohol Concentration Test. The provisions of this subdivision do not limit the introduction of any other competent evidence bearing on the question of whether a person charged with the violation of RSA 265-A:2, I(a), or RSA 265-A:3, I, was under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic.***

8 Chemical Substance. Amend RSA 265-A:10 to read as follows:

265-A:10 Effect of Evidence of Refusal to Take Alcohol Concentration Test. If a person refuses to submit to a test as provided in RSA 265-A:4, such refusal may be admissible into evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by that person while driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic.***

9 Chemical Substance. Amend RSA 265-A:11 to read as follows:

265-A:11 Evidence.

I. Upon complaint, information, indictment, or trial of any person charged with the violation of RSA 265-A:2, the court may admit evidence of physical testing of the defendant for being under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** as provided in RSA 265-A:4, and of the [~~controlled drug~~] ***chemical substance, natural or synthetic,*** content of the defendant's blood and the defendant's alcohol concentration, as shown by a test of his or her breath, blood, or urine as provided in RSA 265-A:4. Evidence that there was, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor. Evidence that there was, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence but is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more is prima facie evidence that the defendant was under the influence of intoxicating liquor. In addition, evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:2, I(b) of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:2, I(b); and evidence that there was, at the time alleged, an alcohol concentration of 0.08

or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, II of driving or attempting to drive a vehicle upon a way and of one or more of the circumstances specified in RSA 265-A:3, II (a), (b), (c), and (d) constitute a separate offense under RSA 265-A:3, II; and evidence that there was, at the time alleged, an alcohol concentration of 0.16 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, III of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:3, III.

II. Upon complaint, information, indictment, or trial of any person charged with a violation of the provisions of RSA 265-A:2, II relative to the operation of boats by a person under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic***, the court may admit evidence of the defendant's alcohol concentration at the time alleged, as shown by a chemical, infrared molecular absorption, or gas chromatograph test or tests of his or her breath, urine, or blood. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more, is prima facie evidence that the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence and may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

10 Chemical Substance. Amend RSA 265-A:12, V to read as follows:

V. Any person who is arraigned on a charge arising under RSA 265-A:2, RSA 265-A:3, or RSA 265-A:43 shall file, within 10 days of such person's receipt of the results of any toxicology test administered to such person for the presence of any [~~controlled drug~~] ***chemical substance, natural or synthetic***, a notice in said court requiring the attendance of the certifying scientist. Failure to file notice shall be deemed a waiver to require attendance of the certifying scientist at trial. The official report of the test issued pursuant to RSA 265-A:4 shall be deemed conclusive evidence of the conduct of the result of such test.

11 Chemical Substance. Amend RSA 265-A:14, IV(a) to read as follows:

(a) That the authorized agent or peace officer had reasonable grounds to believe the arrested person had been operating, had been attempting to operate, or was in actual physical control of a boat upon the public waters of this state while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or any combination thereof;

12 Chemical Substance. Amend RSA 265-A:15, I to read as follows:

I. Any law enforcement officer, authorized agent, or peace officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to

operate, or in actual physical control of a boat upon the public waters of the state while under the influence of intoxicating liquor or [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or while the person's alcohol concentration was 0.08 or more or in the case of a person under the age of 21, 0.02 or more or in the case of a person licensed to operate and operating a commercial vehicle or operating a commercial vessel and licensed pursuant to RSA 270-E:22 at the time of the offense, 0.04 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of any test administered under this section may be introduced into evidence in a court for any relevant purpose. Failure to submit to the test shall not constitute a violation of this chapter. Evidence of a failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this subdivision, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 265-A:2, I(a), RSA 265-A:2, II, or RSA 265-A:3 was under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic***. Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The police officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The results of the test shall be furnished immediately to the person tested by the police officer administering the test and in writing, if requested.

13 Chemical Substance. Amend the introductory paragraph of RSA 265-A:16 to read as follows:

265-A:16 Blood Testing of Certain Motor Vehicle Fatalities. When a collision, boating accident, or OHRV accident results in death or serious bodily injury to any person, all drivers or operators involved, whether living or deceased, and all deceased vehicle, boat, or OHRV occupants and pedestrians involved shall be tested for evidence of alcohol or [~~controlled drugs~~] ***chemical substances, natural or synthetic***. A law enforcement officer, authorized agent, or peace officer shall request a licensed physician, registered nurse, certified physician's assistant, or qualified medical technician or medical technologist to withdraw blood from each driver or operator involved if living and from the body of each deceased driver or operator, deceased occupant, or deceased pedestrian, in accordance with RSA 611-B:14, II, for the purpose of testing for evidence of alcohol content or [~~controlled drugs~~] ***chemical substances, natural or synthetic***; provided that in the case of a living driver or operator the officer has probable cause to believe that the driver or operator caused the collision or accident. All tests made under this section shall be conducted by the forensic science laboratory established in RSA 106-B:2-a or in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended. A copy of the report of any such test shall be kept on file by

the medical examiner. The filed report is not a public record under RSA 91-A. However, the report shall be made available to the following:

14 Chemical Substance. Amend RSA 265-A:17 to read as follows:

265-A:17 Arrest Without a Warrant. Notwithstanding any other statutory provision of law to the contrary, a law enforcement officer may, without a warrant, arrest any person involved in a traffic accident, OHRV accident, or boating accident when the officer has probable cause to believe that such person has committed an offense, an element of which is driving under the influence of intoxicating liquors, [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or both. Notwithstanding any statutory provision of law to the contrary, a law enforcement officer may make such an arrest in such officer's own jurisdiction or on the property of any medical facility in another jurisdiction in this state where the person or others are taken for treatment for injuries suffered in such traffic accident.

15 Chemical Substance. Amend RSA 265-A:21, I to read as follows:

I. Notwithstanding the provisions of RSA 651:5, no court shall order an annulment of any record of conviction of driving or attempting to drive a vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat on the waters of this state while under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or while having an alcohol concentration of 0.08 or more or of aggravated drunken driving until 10 years after the date of conviction. Any record thus annulled shall be retained in a permanent file, to be opened only for purposes of sentencing in the case of an offense under RSA 265-A:3.

16 Chemical Substance. Amend RSA 265-A:35, II to read as follows:

II. No holder of a probationary license shall drive or attempt to drive a vehicle upon any way when he or she is under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and [~~controlled drugs~~] ***chemical substances, natural or synthetic***, so that the alcohol concentration is 0.03 or more. Driving with an alcohol concentration of 0.03 or more is a per se violation of a probationary license and subjects the probationary license holder to administrative suspension of his or her driver's license for not less than 90 days and not more than 180 days. Such administrative suspension shall be in addition to any court imposed suspension or revocation periods.

17 Chemical Substance. Amend RSA 270:12-a, I(b) to read as follows:

(b) The provisions of RSA 265-A, relative to the operation or attempted operation of boats by a person under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or other unlawful operation of boats thereunder;

18 Chemical Substance. Amend RSA 651:6, II(b)-(c) to read as follows:

(b) Has previously been convicted of a violation of RSA 630:3, II, RSA 265-A:3, I(b) or II(b), or any crime in any other jurisdiction involving driving or attempting to drive a motor vehicle

under the influence of [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or intoxicating liquors, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b); or

(c) Has twice previously been convicted in this state or any other jurisdiction, for driving or attempting to drive a motor vehicle under the influence of intoxicating liquors or [~~controlled drugs~~] ***chemical substances, natural or synthetic***, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b).

19 Effective Date. This act shall take effect January 1, 2013.

2012-0115h

AMENDED ANALYSIS

This bill changes the prohibition on driving under the influence of a controlled drug to driving under the influence of a chemical substance, natural or synthetic.

# Speakers

2:30 P.M.

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1699-FN Date January 25, 2012

Committee Criminal Justice and Public Safety

** Please Print All Information **

| Name | Address | Phone | Representing | (check one) Pro | Con |
|---|---|---|---|---|---|
| Colleen E. Scarneo | 33 Hazen Drive, Concord, NH | 223 8987 | Dept of Safety | ✓ | |
| Garret Ean | Concord | 226-0246 | Self | | X |
| Christopher Krayniker C.O.P. Ret | | | NH Chiefs Association | ✓ | |
| John E Thulit | Deputy Chief | 832-22X | POST | X | |
| Kevin Eckel, AAG | 33 Capitol St Concord | 271-1209 | Attorney General | ✓ | |
| Rep. Mark Miller | EXETER | 632-5555 | | ✓ | |
| Peter Thomson; 78 Regional, Concord N.H. - Highway Safety Agency | | | | ✓ | |
| Seth Cooper | NH TROOPERS ASSOC. | | | ✓ | |
| John Womsatt | 11 Hazen Drive Concord, NH | 271-3129 | NH F&G | ✓ | |

# Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1699-FN

BILL TITLE: relative to driving under the influence of drugs.

DATE: January 25, 2012

LOB ROOM: 204 **Time Public Hearing Called to Order:** 3:05 p.m.

**Time Adjourned:** 4:25 p.m.

(please circle if present)

**Committee Members:** Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.

**Bill Sponsors:** Rep. Holden, Hills 4; Rep. O'Brien, Hills 4; Sen. White, Dist 9

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Holden – Supports – Has amendment. Amendment 2012-0115h.**

**Rep. John Tholl - Supports - Spoke about some experiences.**

**Chief Krajenka (Retired) - Supports - Representing Hillsboro County Chiefs Association and N. H. Police Chiefs Association.**

***Sgt Matthew Shapiro - Supports - Written testimony provided. Colleen Scarneo. Forensic Toxicologist.**

**Katherine Cooper, N. H. Association Criminal Defense Lawyer. Opposed. Bill is not fair. Does not agree with testimony provided.**

**Pat Rainboch, Victims Inc. - Supports - Feels that police needs the tools to provide safety for all.**

**Rep Gagne – Reading testimony of House Speaker O'Brien.**

**SUBCOMMITTEE: Rep. Welch, Chair, Rep. Shurtleff, Rep. Charron, Rep. Tasker and Rep. Pantelakos.**

**Respectfully Submitted:**

Gene P. Charron

**Rep. Gene Charron, Clerk**

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1699-FN

**BILL TITLE:** relative to driving under the influence of drugs.

**DATE:**

**LOB ROOM:** 204 **Time Public Hearing Called to Order:** 15:05

**Time Adjourned:**

(please circle if present)

**Committee Members:** Reps. Swinford, Cagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg

**Bill Sponsors:** Rep. Holden, Hills 4; Rep. O'Brien, Hills 4; Sen. White, Dist 9

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

HB 1699

support 1:05 Rep Holden. Amendment.
2012-0115h.
Amendment 2012-0115h

3:15 support Rep John E Tholl - spoke to some erperiences

(3) 3:20 support CHIEF KRAJENKA (RETIRED) representing Hillsborough County Chiefs Assn and N.H. Police Chiefs Assn.

(4) 3:30 support Sgt Matthew Shapiro - N.H. STATE POLICE
Written testimony provided
Colleen Scarneo Forensic Toxicologist

(5) 4:15 opposed Katherine Cooper, N.H. Assn CRIMINAL Defense Lawyer. Bill is not fair Does not agree with testimony provided.

6. 4:20 support Pat Rainbock, Victims Inc.
Feels that police needs the tools to provide safety for all.

7 4:25 Rep Gagne - reading testimony of House speaker O'Brien

Closed
4:25

Sub Committee

Shurtleff — DAVE Chair

Chasnoff

Pantalako

Welch

Tasker

9:00

Tuesday

Jan 31st

# Sub-Committee Actions

## HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

## SUBCOMMITTEE WORK SESSION ON HB 1699-FN

**BILL TITLE:** relative to driving under the influence of drugs.

**DATE:** January 31, 2012

**Subcommittee Members:** Reps. Welch, Charron Pantelakos, Tsker and Shurtleff

**Comments and Recommendations:**

**Amendments:**

| | | | |
|---|---|---|---|
| Sponsor: Rep. Holden | OLS Document #: | 2012 | 0115h |
| Sponsor: Rep. | OLS Document #: | | |
| Sponsor: Rep. | OLS Document #: | | |

**Motions:** OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Gene Charron

Seconded by Rep. Stephen Shurtleff

Vote: 4-1

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,
J. David Welch
Rep. David Welch
Subcommittee Chairman/Clerk

## HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

## SUBCOMMITTEE WORK SESSION ON HB 1699-FN

**BILL TITLE:** relative to driving under the influence of drugs.

**DATE:** 1-31-2012

**Subcommittee Members:** Reps. Welch, Charron, Pantelakos, Tasker, Shurtleff

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep. Holden — OLS Document #: 0115h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

**Motions:** OTP (OTP/A) ITL, Interim Study (Please circle one.)

Moved by Rep. Charron

Seconded by Rep. Shurtleff

Vote: 4-1

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. David Welch
Subcommittee Chairman/Clerk

Rep. Holden, Hills. 4
January 5, 2012
2012-0115h
03/04

Amendment to HB 1699-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Chemical Substance. Amend RSA 261:180, III to read as follows:

III. The commissioner, when suspending a driver's license or privilege to drive because the driver is an habitual offender or has been convicted of negligent homicide involving the use of a motor vehicle, manslaughter involving the use of a motor vehicle, a subsequent offense of driving or attempting to drive under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** under RSA 265-A:2, I, or aggravated driving while intoxicated or attempted aggravated driving while intoxicated under RSA 265-A:3, shall also revoke the registration of any vehicle registered to the individual whose license is being revoked or suspended, for the period of revocation or suspension of the license or privilege to drive.

2 Chemical Substance. Amend RSA 265-A:2 to read as follows:

265-A:2 Driving or Operating Under Influence of Drugs or Liquor; Driving or Operating With Excess Alcohol Concentration.

I. No person shall drive or attempt to drive a vehicle upon any way or operate or attempt to operate an OHRV:

(a) While such person is under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and [~~controlled drugs~~] ***chemical substances, natural or synthetic***; or

(b) While such person has an alcohol concentration of 0.08 or more or in the case of a person under the age of 21, 0.02 or more.

II. No person shall operate or attempt to operate a boat while under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and a [~~controlled drug or drugs~~] ***chemical substance or substances, natural or synthetic***, or while such person has an alcohol concentration of 0.08 or more or in the case of persons under the age of 21, 0.02 or more.

3 Chemical Substance. Amend the introductory paragraph of RSA 265-A:3, I to read as follows:

I. While under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and [~~controlled drug or drugs~~] ***chemical substance or substances, natural or synthetic,*** and, at the time alleged:

4 Chemical Substance. Amend RSA 265-A:4 to read as follows:

265-A:4 Implied Consent of Driver or Operator to Submit to Testing to Determine Alcohol

Concentration. Any person who drives, operates, or attempts to operate an OHRV, drives or attempts to drive a vehicle upon the ways of this state, or operates or attempts to operate a boat upon the public waters of the state shall be deemed to have given consent to physical tests and examinations for the purpose of determining whether such person is under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic***, and to a chemical, infrared molecular absorption, or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath, for the purpose of determining the [~~controlled drug~~] ***chemical substance, natural or synthetic,*** content of such person's blood or alcohol concentration if arrested for any offense arising out of acts alleged to have been committed while the person was driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or while having an alcohol concentration in excess of the statutory limits contained in RSA 265-A:2 or RSA 265-A:3. The test or tests shall be administered at the direction of a law enforcement officer, peace officer, or authorized agent having reasonable grounds to believe the person to have been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving or in actual physical control of a vehicle, or operating or in actual physical control of a boat while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or while having an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21, 0.02 or more. A copy of the report of any such test shall be furnished by the law enforcement agency to the person tested within 48 hours of receipt of the report by the agency by certified mail directed to the address shown on such person's license or other identification furnished by the person. Results of a test of the breath shall be furnished immediately in writing to the person tested by the certified breath testing operator conducting the test. When the incident involves an accident resulting in death or serious bodily injury to any person as provided in RSA 265-A:16, the prerequisites of RSA 265-A:8 shall not apply. Properly trained personnel of the United States Coast Guard may arrest and conduct tests on persons who are believed to be under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic***, or a combination thereof, and who are in physical control of a boat operating upon the public coastal waters of this state.

5 Chemical Substance. Amend RSA 265-A:5, II to read as follows:

II. All such blood and urine tests made under the direction of a law enforcement officer, authorized agent, or peace officer shall be conducted in the forensic science laboratory of the department of safety established in RSA 106-B:2-a or, in the case of blood and urine samples to be tested for the presence of [~~controlled drugs~~] ***chemical substances, natural or synthetic***, in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services

under the Clinical Laboratory Improvement Act of 1988, as amended.

6 Chemical Substance. Amend RSA 265-A:5, V(a) to read as follows:

(a) Methods and procedures for the testing of blood, urine, and breath to determine alcohol concentration and [~~controlled drug~~] ***chemical substance, natural or synthetic,*** content of a person's blood;

7 Chemical Substance. Amend RSA 265-A:9 to read as follows:

265-A:9 Effect of Evidence of Alcohol Concentration Test. The provisions of this subdivision do not limit the introduction of any other competent evidence bearing on the question of whether a person charged with the violation of RSA 265-A:2, I(a), or RSA 265-A:3, I, was under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic.***

8 Chemical Substance. Amend RSA 265-A:10 to read as follows:

265-A:10 Effect of Evidence of Refusal to Take Alcohol Concentration Test. If a person refuses to submit to a test as provided in RSA 265-A:4, such refusal may be admissible into evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by that person while driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic.***

9 Chemical Substance. Amend RSA 265-A:11 to read as follows:

265-A:11 Evidence.

I. Upon complaint, information, indictment, or trial of any person charged with the violation of RSA 265-A:2, the court may admit evidence of physical testing of the defendant for being under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** as provided in RSA 265-A:4, and of the [~~controlled drug~~] ***chemical substance, natural or synthetic,*** content of the defendant's blood and the defendant's alcohol concentration, as shown by a test of his or her breath, blood, or urine as provided in RSA 265-A:4. Evidence that there was, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor. Evidence that there was, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence but is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more is prima facie evidence that the defendant was under the influence of intoxicating liquor. In addition, evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:2, I(b) of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:2, I(b); and evidence that there was, at the time alleged, an alcohol concentration of 0.08

or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, II of driving or attempting to drive a vehicle upon a way and of one or more of the circumstances specified in RSA 265-A:3, II (a), (b), (c), and (d) constitute a separate offense under RSA 265-A:3, II; and evidence that there was, at the time alleged, an alcohol concentration of 0.16 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, III of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:3, III.

II. Upon complaint, information, indictment, or trial of any person charged with a violation of the provisions of RSA 265-A:2, II relative to the operation of boats by a person under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic***, the court may admit evidence of the defendant's alcohol concentration at the time alleged, as shown by a chemical, infrared molecular absorption, or gas chromatograph test or tests of his or her breath, urine, or blood. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more, is prima facie evidence that the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence and may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

10 Chemical Substance. Amend RSA 265-A:12, V to read as follows:

V. Any person who is arraigned on a charge arising under RSA 265-A:2, RSA 265-A:3, or RSA 265-A:43 shall file, within 10 days of such person's receipt of the results of any toxicology test administered to such person for the presence of any [~~controlled drug~~] ***chemical substance, natural or synthetic***, a notice in said court requiring the attendance of the certifying scientist. Failure to file notice shall be deemed a waiver to require attendance of the certifying scientist at trial. The official report of the test issued pursuant to RSA 265-A:4 shall be deemed conclusive evidence of the conduct of the result of such test.

11 Chemical Substance. Amend RSA 265-A:14, IV(a) to read as follows:

(a) That the authorized agent or peace officer had reasonable grounds to believe the arrested person had been operating, had been attempting to operate, or was in actual physical control of a boat upon the public waters of this state while under the influence of intoxicating liquor or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or any combination thereof;

12 Chemical Substance. Amend RSA 265-A:15, I to read as follows:

I. Any law enforcement officer, authorized agent, or peace officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to

operate, or in actual physical control of a boat upon the public waters of the state while under the influence of intoxicating liquor or [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or while the person's alcohol concentration was 0.08 or more or in the case of a person under the age of 21, 0.02 or more or in the case of a person licensed to operate and operating a commercial vehicle or operating a commercial vessel and licensed pursuant to RSA 270-E:22 at the time of the offense, 0.04 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of any test administered under this section may be introduced into evidence in a court for any relevant purpose. Failure to submit to the test shall not constitute a violation of this chapter. Evidence of a failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this subdivision, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 265-A:2, I(a), RSA 265-A:2, II, or RSA 265-A:3 was under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic***. Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The police officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The results of the test shall be furnished immediately to the person tested by the police officer administering the test and in writing, if requested.

13 Chemical Substance. Amend the introductory paragraph of RSA 265-A:16 to read as follows:

265-A:16 Blood Testing of Certain Motor Vehicle Fatalities. When a collision, boating accident, or OHRV accident results in death or serious bodily injury to any person, all drivers or operators involved, whether living or deceased, and all deceased vehicle, boat, or OHRV occupants and pedestrians involved shall be tested for evidence of alcohol or [~~controlled drugs~~] ***chemical substances, natural or synthetic***. A law enforcement officer, authorized agent, or peace officer shall request a licensed physician, registered nurse, certified physician's assistant, or qualified medical technician or medical technologist to withdraw blood from each driver or operator involved if living and from the body of each deceased driver or operator, deceased occupant, or deceased pedestrian, in accordance with RSA 611-B:14, II, for the purpose of testing for evidence of alcohol content or [~~controlled drugs~~] ***chemical substances, natural or synthetic***; provided that in the case of a living driver or operator the officer has probable cause to believe that the driver or operator caused the collision or accident. All tests made under this section shall be conducted by the forensic science laboratory established in RSA 106-B:2-a or in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended. A copy of the report of any such test shall be kept on file by

the medical examiner. The filed report is not a public record under RSA 91-A. However, the report shall be made available to the following:

14 Chemical Substance. Amend RSA 265-A:17 to read as follows:

265-A:17 Arrest Without a Warrant. Notwithstanding any other statutory provision of law to the contrary, a law enforcement officer may, without a warrant, arrest any person involved in a traffic accident, OHRV accident, or boating accident when the officer has probable cause to believe that such person has committed an offense, an element of which is driving under the influence of intoxicating liquors, [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or both. Notwithstanding any statutory provision of law to the contrary, a law enforcement officer may make such an arrest in such officer's own jurisdiction or on the property of any medical facility in another jurisdiction in this state where the person or others are taken for treatment for injuries suffered in such traffic accident.

15 Chemical Substance. Amend RSA 265-A:21, I to read as follows:

I. Notwithstanding the provisions of RSA 651:5, no court shall order an annulment of any record of conviction of driving or attempting to drive a vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat on the waters of this state while under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or while having an alcohol concentration of 0.08 or more or of aggravated drunken driving until 10 years after the date of conviction. Any record thus annulled shall be retained in a permanent file, to be opened only for purposes of sentencing in the case of an offense under RSA 265-A:3.

16 Chemical Substance. Amend RSA 265-A:35, II to read as follows:

II. No holder of a probationary license shall drive or attempt to drive a vehicle upon any way when he or she is under the influence of intoxicating liquor or any [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or any combination of intoxicating liquor and [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** so that the alcohol concentration is 0.03 or more. Driving with an alcohol concentration of 0.03 or more is a per se violation of a probationary license and subjects the probationary license holder to administrative suspension of his or her driver's license for not less than 90 days and not more than 180 days. Such administrative suspension shall be in addition to any court imposed suspension or revocation periods.

17 Chemical Substance. Amend RSA 270:12-a, I(b) to read as follows:

(b) The provisions of RSA 265-A, relative to the operation or attempted operation of boats by a person under the influence of intoxicating liquor or a [~~controlled drug~~] ***chemical substance, natural or synthetic,*** or other unlawful operation of boats thereunder;

18 Chemical Substance. Amend RSA 651:6, II(b)-(c) to read as follows:

(b) Has previously been convicted of a violation of RSA 630:3, II, RSA 265-A:3, I(b) or II(b), or any crime in any other jurisdiction involving driving or attempting to drive a motor vehicle

under the influence of [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or intoxicating liquors, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b); or

(c) Has twice previously been convicted in this state or any other jurisdiction, for driving or attempting to drive a motor vehicle under the influence of intoxicating liquors or [~~controlled drugs~~] ***chemical substances, natural or synthetic,*** or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b).

19 Effective Date. This act shall take effect January 1, 2013.

2012-0115h

AMENDED ANALYSIS

This bill changes the prohibition on driving under the influence of a controlled drug to driving under the influence of a chemical substance, natural or synthetic.

# Testimony

HB1699-FN

# Testimony on HB 1699 (as amended)

## Colleen Scarneo – Forensic Toxicologist

## Department of Safety State Police Forensic Laboratory

## 1-25-12

Good afternoon. My name is Colleen Scarneo and I'm a Forensic Toxicologist currently employed at the Department of Safety's State Police Forensic Laboratory. I have more than 20 years of experience working in the field of Forensic Toxicology and I am certified as a specialist in this area by the American Board of Forensic Toxicology. My primary job responsibilities include testifying as an expert witness during DWI trials, as well as any other criminal investigations, in which testimony is needed to explain the effects of alcohol and drugs on human performance and behavior, particularly with respect to driving.

I'm here today to ask that you pass HB 1699 as amended which will change the current language in the DWI Statute RSA 265-A to include not only controlled drugs, but any chemical substance, natural or synthetic that may impair a person's ability to safely operate a motor vehicle. It has been my experience after reviewing and testifying at hundreds of alcohol and drug impaired driving cases that the current DWI statute is inadequate and does not sufficiently address the problem of impaired drivers in our state. I have 3 examples to illustrate this point.

The first case involves a 55 year old woman who was driving erratically almost causing several accidents. Law enforcement observed her almost rear end someone at a red light. She is stopped and the officer noted obvious signs of impairment to include slurred speech, red bloodshot and glassy eyes, poor coordination and balance. She told the officer that she had just left a local restaurant where she had a couple of glasses of wine and that her medications make her feel "swervy" and "she loses her balance when taking it ...probably should not have been drinking while taking medication". She indicated that she takes Neurontin which is an anti-epileptic medication used to prevent seizures from occurring and is also used to treat nerve pain. Her blood sample was tested and four drugs were found: gabapentin (Neurontin), amitriptyline (Elavil), mirtazapine (Remeron), and paroxetine (Paxil). Two of the four drugs identified resulted in levels considered higher than normal therapeutic amounts. None of the drugs found in her blood were controlled drugs and her blood alcohol test was negative. Hence, she could not be charged with a DWI, despite the fact that she almost caused several motor vehicle crashes, admitted to mixing her meds with alcohol knowing that this was ill advised and risky, and her blood drug levels were above normal therapeutic values.

The second case I'd like to present addresses the inconsistencies in how drugs are "Controlled". Sgt. Shapiro did an excellent job explaining the reasoning behind why and how drugs are scheduled I thru V. The following example describes a drug called butalbital which is used for the treatment of migraine headaches. Butalbital is never prescribed as a sole agent. In other words, you can't go to the doctor and get a prescription for just butalbital. It is available in 2 different formulated medications: Fioricet and Fiorinal. Both Fioricet and Fiorinal contain butalbital, the psychoactive component of the medicine, and caffeine. The only difference between these 2 medications is that Fioricet is made with acetaminophen while Fiorinal is made with aspirin. Despite this subtle difference, Fiorinal is a Schedule III controlled substance but Fioricet is not scheduled at all. How is it fair to charge someone with a DWI who takes Fiorinal and not be able to do the same for someone who takes Fioricet? This is clearly not fair and a reflection of the confounding issues surrounding controlling chemical substances.

In fact, there was a recent case involving this very situation when a man driving his motorcycle had a serious crash resulting in injury to himself after he had been drinking alcohol and taking Fioricet. He displayed obvious signs of impairment as noted by the police and other witnesses. His blood alcohol concentration was 0.03 g/100 ml and he had a significant amount of butalbital in his blood. When he was treated at the hospital he tried to conceal ~18 Fioricet pills in his sock asking the nurse not to tell the police about them. The case is pending prosecution but faces the potential challenge that the source of butalbital came from Fioricet, a non controlled drug, and hence can not be considered as part of the overall impairment.

Finally, this last case involves a young man who immediately after being released from a rehab facility in VT drove to a local store and bought a six pack of beer, then went to a nearby office supply store to purchase 2 cans of Dust Destroyer. Dust Destroyer is a propellant used to clean electronic equipment such as computer keyboards, etc... After huffing (inhaling) both cans of Dust Destroyer which contains the active ingredient, difluoroethane, and drinking a couple beers he went on a joy ride which involved a hit and run crashing into a parked vehicle at a high rate of speed then crossing the state line into NH where he was finally stopped by law enforcement. He was obviously impaired when the officer came into contact with him. His blood was tested at the NH Forensic Toxicology laboratory where it was determined that his blood alcohol level was a 0.04 g/100 ml which is well below the per se level of 0.08. He appeared far more intoxicated when he was stopped than what this alcohol level would suggest. This case is pending prosecution in both NH and VT. We anticipate the defense challenge that difluroethane is not a controlled drug.

These three cases are only a few of the many reasons why the current DWI statute is not sufficient in getting drivers who are impaired by various non controlled substances, to include drugs, off the road. There are many psychoactive drugs that are commonly prescribed that are not controlled but

have the potential to impair driving. Furthermore, the scheduling process is not consistent as was shown when comparing Fioricet and Fiorinal. And, finally there are hundreds of non controlled chemical substances that are being abused by people who then drive under the influence from them and there is no means to prosecute them under our current DWI laws.

Please support HB 1699 and make driving while impaired by any chemical, natural or synthetic prohibited in our state.

Thank you for your attention.

HB 1699-FN

(4)

# Legislative Position Paper
# NH Department of Safety

**HB 1699** DUI-D
**Position:** IN FAVOR

Good afternoon- I want to thank you for hearing from me today as the issue before you has been a problem known to me for many years. Before I get started I would like to take a moment to describe for the committee who I am and how I came to appear before you. My name is Matthew Shapiro and I am currently a sergeant with the New Hampshire State Police. At this time my primary responsibilities include being both the Highway Safety Coordinator and Drug Recognition Expert (DRE) Unit Commander. I have been a certified DRE and standardized field sobriety tests (SFST) instructor for the last (15) years teaching at nearly every SFST class administered by Police Standards and Training during that time. I have also been a DRE instructor for the last (13) years and have had the opportunity to teach at and administered several DRE schools and DRE evaluation nights in a wide variety of unique locations. Over the course of my career I have also been awarded, "Looking Beyond the Traffic Ticket" awards for impaired driving enforcement and the, "Director's Award" from the State Police for my highway safety related efforts. I am here today to speak in support of HB 1699, which expands the current language in the state's DUI statute to include not only, "Controlled drugs," but, "Any chemical substance natural or synthetic."

For years the way that New Hampshire has defined driving under the influence has created an, I believe, unintentional loophole, making it difficult, and sometimes impossible to prosecute drivers impaired by certain drugs. The current elements of the offense require that a person drives under the influence of alcohol or a, "Controlled drug" or a combination of the two. In order to fully understand the shortcomings of this definition we should take a moment to explore both how and why drugs are, "Controlled."

New Hampshire essentially follows the federal scheduling criteria under 318-B:1-a Scheduling by the Commissioner, which reads that the following (8) criteria shall be considered:

(1) Actual or relative potential for abuse;
(2) Scientific evidence of its pharmacological effect (mechanism of action), if known;
(3) State of the current scientific knowledge regarding the substance (pharmacokinetics-absorption, distribution, metabolism, elimination etc.);
(4) History and current pattern of abuse;
(5) Scope, duration, and significance of abuse;
(6) Risk to the public health;
(7) Potential of the substance to produce psychic or physical dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

If you refer to the (8) criteria listed on my written statement you can see that the scheduling of drugs requires a great deal of time, research, and analysis and often the criteria are not met until an epidemic already exists.

Some Examples

GHB (Gamma Hydroxybutyrate) a powerful CNS depressant (hypnotic) was synthesized in the 1960's as an anesthetic to aid surgery. It was not until the 1990's when it became popular in the, "Rave" club drug scene, with bodybuilders, and as a date rape drug that it was controlled in 1997.

SOMA (Carisoprodol) a powerful muscle relaxant with effects similar to alcohol intoxication was approved for use in the U.S. in 1959. Its impairment has a nickname in illicit drug circles as the, "Soma coma." In 1996 the DEA asked that it be considered for scheduling and an advisory committee concluded that there was not enough information. Soma was finally scheduled on January 11, 2012 (15) years later.

"K2 and Spice" type products are marketed as, "Incense" but are really incense sprayed with synthetic cannabinoids, which cause effects like a combination of stimulants, cannabis, ecstasy, and PCP such as: tremors, hallucinations, delusions, paranoia, unpredictable behavior, anxiety, incoherent slurred speech etc. They first went on sale in the early 2000's and have been sold in head (smoke) shops, gas stations, truck stops, and online. On March 1, 2011 five synthetic cannabinoids were finally, "temporarily" scheduled (JWH-018, JWH-073, CP-47,497, JWH-200, and cannabicyclohexanol) until enough data can be gathered to meet the scheduling criteria. However, hundreds of other synthetic cannabinoids have already been synthesized and more continue to be synthesized to this date circumventing their control.

Products known as "Bath Salts" or "Plant Food," which are really neither, but synthetic stimulants marketed in this way to avoid FDA regulation are chemical structures like (Mephedrone/MDPV/Methylone) with effects like MDMA (ecstasy), amphetamines, and cocaine such as: dilated pupils, euphoria, hyper alertness and anxiety, significantly raised blood pressure and pulse, cause fidgetiness, possible hallucinations, tremors, and possible death and were first synthesized in 1929 and rediscovered in 2003. By 2007 Mephedrone was being sold on the internet, in head (smoke) shops, gas stations, and truck stops and they were also finally "temporarily scheduled" in October of 2011. Similar to synthetic cannabinoids many other synthetic stimulants have already been and continue to be synthesized circumventing their control.

Why Drugs Are Controlled

The scheduling of, "controlled substances" falls into the five categories as listed below. If you refer to my written statement you will see that scheduling has to do with abuse potential and not necessarily with the ability to impair a person to drive. Anabolic steroids are schedule III drugs and a perfect illustration of this fact.

Schedule I- High potential for abuse, no currently accepted medical use in the U.S., lack of accepted safety for use of the drug under medical supervision. Examples: Heroin, LSD, Psilocybin etc.

Schedule II- High potential for abuse, currently accepted medical use in the U.S. with severe restrictions, may lead to severe psychological or physical dependence. Example: Fentanyl, Morphine, Oxycontin, Percocet etc.

Schedule III- Potential for abuse less than schedule I or II, currently accepted medical use in U.S., abuse may lead to moderate or low physical dependence or high psychological dependence. Examples: Butalbital, Ketamine, Suboxone, Anabolic Steroids etc.

Schedule IV- Lower potential for abuse relative to the drugs in schedule III, accepted medical use in the U.S., abuse may lead to limited physical dependence or psychological dependence relative to schedule III. Examples: Xanax, Klonopin, Valium, Provigil, Ambien etc.

Schedule V- Low potential for abuse relative to the drugs in schedule IV, currently accepted medical use in the U.S., abuse may lead to limited physical dependence or psychological dependence relative to schedule IV. Example: Lyrica etc.

With the explosion in prescription drug abuse in recent years, the rapid rate of synthesized drug creation, and the near instantaneous sharing of information through the advent of the internet New Hampshire's DUI-D loophole has grown. There are currently hundreds of non-controlled drugs that people are taking that impair their ability to safely drive to include:

Inhalants- Volatile solvents, aerosols, and anesthetic gases, often called deliriants, like oil based paints, Dust Off, Nitrous Oxide, Amyl Nitrate, Butyl Nitrate etc.

As previously stated, many psychedelic amphetamines, synthetic cannabinoids, and other designer drugs, and please let me remind you that by changing the chemical structure of a controlled drug slightly it then becomes something else with the same effects and yet may not be covered under the law. This has become a joke both on the internet (You Tube) and here in New Hampshire as evidenced by all of these products, which I purchased yesterday at convenience stores and smoke shops within a mile of the State House.

Salvia Divinorum a popular hallucinogen causing uncontrollable laughter, visions of membranes, sensations of being pulled or twisted and merging with objects, and perceptions of being in locations other than where you are (which would obviously not be good for driving).

Kratom (Mitragynine) an addictive stimulant with opiate and hallucinogenic like qualities that comes from Southeast Asia where it is controlled in Thailand. Kratom has been compared to Ibogaine, which is controlled in the U.S. as a Schedule I drug.

Jimson Weed another hallucinogen drug.

Dextromethorphan (DXM), which when, "Robotripped" or taken in very large quantities, can act like a dissociative anesthetic or PCP.

Tramadol/Ultram a narcotic with the potential to impair similarly to any other narcotic such as Vicodin, Oxycontin, Percocet etc.

And many CNS depressants with the potential to impair similarly to Xanax, Klonopin, Valium, etc. such as:

Trazodone/Desyrel
Elavil/Amitriptyline
Nortriptyline/Aventyl/Pamelor
Wellbutrin/Bupropion
Paxil/Paroxetine
Zoloft/Sertraline
Effexor/Venlafaxine
Cymbalta/Duloxetine
Prozac/Fluoxetine
Celexa/Citalopram
Lexapro/Escitalopram
Abilify/Aripiprazole
Seroquel/Quetiapine
Lithium
Risperdal/Risperidone
*Propofol
Buspar/Buspirone
Neurontin/Gabapentin
Lamictal/Lamotrigine
*Topamax/Topiramate Has a nickname in illicit drug circles as,"Dopamax"
Dilantin/Phenytoin
Benadryl/Diphenhydramine
Depakote/Divalproex Sodium
*Fioricet/ (Butalbital is controlled)

It is important to remember that just because a drug is not controlled does not mean that it doesn't have the potential to impair. In fact, the manufacturers' of many of the prescribed drugs to which I am referring caution against operating a motor vehicle or other dangerous equipment.

As far as Police Contact

It has been my experience that the (problematic) DUI-D cases involving non-controlled drugs have largely occurred when potentially impairing non-controlled drugs are used in combination with moderate levels of alcohol, or other impairing legal or illegal drugs, or in irresponsible quantities.

It has not been my experience that a person who takes their therapeutic doses of non-controlled, prescribed medications, as directed, is likely to have any negative contact with the police as they will not have been impaired to drive and will show no outward signs of impairment. As a matter of fact, millions of people take these drugs each day without incident.

In Conclusion

It has been said that one man's rights end at the tip of another man's nose. Following that logic, no one should have the right to drive impaired and endanger the lives and well being of their fellow citizens. Because of New Hampshire's current DUI-D loophole this has happened in the past and continues to happen today. As such, it is my request, and the request of the Department of Safety, that you consider this bill and approve it with amendment 2012-0115H.

I thank you for your time and would now ask that you hear from my colleague, Colleen Scarneo, before we answer any of your questions or concerns.

HB1699-FN (5)

# TESTIMONY OF SPEAKER WILLIAM O'BRIEN
# HOUSE BILL 1699 DRIVING WHILE IMPAIRED BY DRUGS · 1/25/2012

Currently there is a dangerous loophole in the law that makes it quite difficult and sometimes impossible to convict drivers that are impaired by drugs or other chemicals. We know that drugged driving, like driving under the influence of alcohol, is impaired driving and a detriment to the driver and others on the road.

According to the Centers for Disease Control and Prevention, vehicular accidents are the leading cause of death among young people aged 16 to 20. Drivers within this age group are the least experienced and combined with use of substances such as marijuana or prescription drugs affecting cognitive and motor abilities, the results are all too often tragic.

Perhaps in part due to the difficulty of defining the amount of certain drugs that causes impairment and difficult in detecting intoxicating levels of certain substances, driving impairment laws in New Hampshire have remained lax in this area.

Other states have implemented Drug Evaluation and Classification Programs, designed to train police officers as Drug Recognition Experts in order to recognize suspicious appearance and behavior that suggests driving impaired beyond just alcohol intoxication. This approach, relying on road side testing, and a 12-Step DRE Protocol can make our roads safer. This protocol is a standardized and systematic method of examining a Driving Under the Influence of Drugs (DUID) suspect to determine the following: (1) whether or not the suspect is impaired; if

so, (2) whether the impairment relates to drugs or a medical condition; and if drugs, (3) what category or combination of categories of drugs are the likely cause of the impairment. The process is systematic because it is based on a complete set of observable signs and symptoms that are known to be reliable indicators of drug impairment. It would allow our law enforcement personnel to identify the driving impairment that would be prohibited if House Bill 1699 is passed.

House Bill 1699 would expand the current driving under the influence statutes in New Hampshire to include the prohibition of driving under the influence of controlled drugs and chemical substances with the ability to impair. I hope this committee gives it careful consideration as it is a much needed provision to tighten up our driving laws and protect our citizens on the roads.

Respectfully submitted,

William O'Brien

Speaker of the House

# Voting Sheets

## HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

## EXECUTIVE SESSION on HB 1699-FN

**BILL TITLE:** **relative to driving under the influence of drugs.**

**DATE:** Feberuary 6, 2012

**LOB ROOM:** 204

**Amendments:**

Sponsor: Rep. Holden — OLS Document #: 2012 0115h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Stephen Shurtleff

Seconded by Rep. Laura Pantelakos

Vote: (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Robbie Parsons

Seconded by Rep. Stephen Shurtleff

Vote: 8-5 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:** REGULAR

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1699-FN

**BILL TITLE:** **relative to driving under the influence of drugs.**

**DATE:**

**LOB ROOM:** 204

**Amendments:**

Sponsor: Rep. HOLDEN — OLS Document #: 2012-0115h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Shurtleff

Seconded by Rep. Pantelakos –

Vote: (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Parsons –

Seconded by Rep. Shurtleff

Vote: (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.) regular

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Irene Charron, Clerk

## CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: 1699-N Title: Relative to driving under the influence DWI- of Drugs.

PH Date: 01/25/12 Exec Session Date: 2/6/2012

Motion: OTP AMENDMENT Amendment #: 2012-0115h

| MEMBER | YEAS | NAYS |
|---|---|---|
| Swinford, Elaine B, Chairman | | ✓ |
| Gagne, Larry G, V Chairman | ✓ | |
| Welch, David A | ✓ | |
| Fields, Dennis H | ✓ | |
| Fesh, Robert M | | |
| Charron, Gene P, Clerk | ✓ | |
| Villeneuve, Moe | | |
| Antosz, Jason P | ✓ | |
| Greazzo, Phil J | | ✓ |
| Kreis, Kenneth | | ✓ |
| Parsons, Robbie L | ✓ | |
| Tasker, Kyle J | | |
| Warden, Mark | | ✓ |
| Pantelakos, Laura C | ✓ | |
| Berube, Roger R | | |
| Shurtleff, Stephen J | ✓ | |
| Ginsburg, Philip E | ✓ | |
| | 9 | 4 |
| TOTAL VOTE: | | |

Printed: 12/21/2011

## CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 1699-FN Title: Relative to driving under the influence of drugs.

PH Date: 01/25/12 Exec Session Date: 2/6/2012

Motion: OTP-I/Amendment Amendment #:

| MEMBER | YEAS | NAYS |
|---|---|---|
| Swinford, Elaine B, Chairman | ✓ | |
| Gagne, Larry G, V Chairman | ✓ | |
| Welch, David A | ✓ | |
| Fields, Dennis H | ✓ | |
| Fesh, Robert M | | |
| Charron, Gene P, Clerk | ✓ | |
| Villeneuve, Moe | | |
| Antosz, Jason P | | ✓ |
| Greazzo, Phil J | | ✓ |
| Kreis, Kenneth | | ✓ |
| Parsons, Robbie L | ✓ | |
| Tasker, Kyle J | | ✓ |
| Warden, Mark | | ✓ |
| Pantelakos, Laura C | ✓ | |
| Berube, Roger R | ✓ | |
| Shurtleff, Stephen J | | |
| Ginsburg, Philip E | | ✓ |
| | 8 | 5 |

TOTAL VOTE:

Printed: 12/21/2011

# Committee Report

REGULAR CALENDAR

March 7, 2012

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB1699-FN,

AN ACT relative to driving under the influence of drugs. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Robbie L Parsons

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

# MAJORITY
# COMMITTEE REPORT

| | |
|---|---|
| Committee: | **CRIMINAL JUSTICE AND PUBLIC SAFETY** |
| Bill Number: | **HB1699-FN** |
| Title: | **relative to driving under the influence of drugs.** |
| Date: | **February 21, 2012** |
| Consent Calendar: | **NO** |
| Recommendation: | **OUGHT TO PASS WITH AMENDMENT** |

## STATEMENT OF INTENT

A bill relative to driving under the influence of drugs. This bill fills a loophole that allows law enforcement to stop drivers that are driving erratically or dangerously. This bill adds chemical substance, natural or synthetic or its metabolics and may be in combination with intoxicating liquor. If the arresting officer deems a person is operating under the influence of these drugs, to prove to the court these facts. At least the person was driving to in danger or reckless.

Vote 8-5

Rep. Robbie L Parsons
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

**HB1699-FN,** relative to driving under the influence of drugs. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Robbie L Parsons for the **Majority** of CRIMINAL JUSTICE AND PUBLIC SAFETY. A bill relative to driving under the influence of drugs. This bill fills a loophole that allows law enforcement to stop drivers that are driving erratically or dangerously. This bill adds chemical substance, natural or synthetic or its metabolics and may be in combination with intoxicating liquor. If the arresting officer deems a person is operating under the influence of these drugs, to prove to the court these facts. At least the person was driving to in danger or reckless. **Vote 8-5.**

Original: House Clerk
Cc: Committee Bill File

**HB 1699-FN,** relative to driving under the influence of drugs. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Robbie L Parsons for the **Majority** of Criminal Justice and Public Safety: This bill fills a loophole that allows law enforcement to stop drivers that are driving erratically or dangerously. This bill adds "chemical substance, natural or synthetic," which may be in combination with intoxicating liquor. If the arresting officer deems a person is operating under the influence of these drugs, physical tests such as blood or urine testing may be conducted and may be admitted in the court as evidence. Current law only specifies controlled drugs of which there are only five controlled drugs. The change from "controlled drugs" to chemical substances, natural or synthetic allows the abuse of several more intoxicating drugs or substances to be detected and used as evidence of impaired driving. **Vote 8-5.**

Rep. Mark Warden for the **Minority** of Criminal Justice and Public Safety: This bill greatly expands prohibitions on drivers of cars, boats and snowmobiles to include all chemical substances, whether natural or synthetic if they lead to driving under the influence. Caffeine, vitamins, fragrances and all prescription drugs would now quality a driver for additional penalties if the driver is under their influence. This law is impractical and virtually unenforceable. While there are proven tests for alcohol concentration in breath or blood, there is no such definitive test for thousands of common substances.

# MAJORITY COMMITTEE REPORT

| | |
|---|---|
| Committee: | **CRIMINAL JUSTICE AND PUBLIC SAFETY** |
| Bill Number: | **HB1699-FN** |
| Title: | **relative to driving under the influence of drugs.** |
| Date: | **February 21, 2012** |
| Consent Calendar: | **NO** |
| Recommendation: | **OUGHT TO PASS WITH AMENDMENT** |

## STATEMENT OF INTENT

~~A bill relative to driving under the influence of drugs.~~ This bill fills a loophole that allows law enforcement to stop drivers that are driving erratically or dangerously. This bill adds chemical substance, natural or synthetic ~~or its metabolics~~ and may be in combination with intoxicating liquor. If the arresting officer deems a person is operating under the influence of these drugs, ~~to prove to the court these facts. At least the person was driving to in danger or reckless~~.

~~testing~~ Physical Tests such as blood or urine testing may be conducted and may be admitted in the court as evidence. Current law only specifys controled drugs of which there are only five controled drugs. The change from "controled drugs" to chemical substances, natural or synthetic allows the abuse of several more intoxicating drugs or substances to be detected and used a evidence of impaired driving.

Vote 8-5

~~Rep. Robbie L Parsons~~
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

# MAJORITY
# COMMITTEE REPORT

| | |
|---|---|
| Committee: | **CRIMINAL JUSTICE AND PUBLIC SAFETY** |
| Bill Number: | **HB1699-FN** |
| Title: | **relative to driving under the influence of drugs.** |
| Date: | **February 21, 2012** |
| Consent Calendar: | **NO** |
| Recommendation: | **OUGHT TO PASS WITH AMENDMENT** |

## STATEMENT OF INTENT

A bill relative to driving under the influence of drugs. This bill fills a loophole that allows law enforcement to stop drivers that are driving erratically or dangerously. This bill adds chemical substance, natural or synthetic or its metabolics and may be in combination with intoxicating liquor. If the arresting officer deems a person is operating under the influence of these drugs, to prove to the court these facts. At least the person was driving to in danger or reckless.

Vote 8-5

Rep. Robbie L Parsons
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

**HB1699-FN**, relative to driving under the influence of drugs. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Robbie L Parsons for the **Majority** of CRIMINAL JUSTICE AND PUBLIC SAFETY. A bill relative to driving under the influence of drugs. This bill fills a loophole that allows law enforcement to stop drivers that are driving erratically or dangerously. This bill adds chemical substance, natural or synthetic or its metabolics and may be in combination with intoxicating liquor. If the arresting officer deems a person is operating under the influence of these drugs, to prove to the court these facts. At least the person was driving to in danger or reckless. **Vote 8-5.**

Original: House Clerk
Cc: Committee Bill File

HB 1699-FN relative to driving under the influence of drugs.

A bill relative to driving under the influence of drugs. This bill fills a loophole that allows law enforcement to stop drivers that are driving erratically or dangerously. This bill adds chemical substance, natural or synthetic or its metabolics and may be in combination with intoxicating liquor. If the arresting officer deems a person is operating under the influence of these drugs, to prove to the court these facts. At least the person was driving to in danger or reckless.

Rep. Robbie Parsons
For the Majority
8-5 ~~OPT~~ OTP RC

Rep. Elaine Sanborn

# COMMITTEE REPORT

**COMMITTEE:** Criminal Justice and Public Safety

**BILL NUMBER:** HB 1699-FN

**TITLE:** Relative to driving under the influence of drugs.

**DATE:** Feb. 6, 2012 **CONSENT CALENDAR:** YES ☐ NO ☑

☑ **OUGHT TO PASS**

per chair ☒ **OUGHT TO PASS W/ AMENDMENT**

**Amendment No.** ~~2012-0115-h~~

☐ **INEXPEDIENT TO LEGISLATE**

☐ ~~**INTERIM STUDY** (Available only 2nd year of biennium)~~

**STATEMENT OF INTENT:**

A bill relative to driving under the influence of drugs. This bill fills a loophole that allows law enforcement to stop drivers that are driving impaired or dangerously. This bill adds Chemical substance, natural or synthetic or its metabolites and may be in combination with intoxicating liquor. If the arresting officer deems of person is operating under the influence of these drugs, to prove to the Court these facts. At least the person was driving to indanger or reckless.

Rep. Elaine Sanborn

**COMMITTEE VOTE:** 8-For/5-no

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. Robbie Parsons
For the Committee

Rev. 02/01/07 - Yellow

REGULAR CALENDAR

March 7, 2012

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB1699-FN,

AN ACT relative to driving under the influence of drugs. Having considered the same, and being unable to agree with the Majority, report with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Mark Warden

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

# MINORITY
# COMMITTEE REPORT

| | |
|---|---|
| Committee: | **CRIMINAL JUSTICE AND PUBLIC SAFETY** |
| Bill Number: | **HB1699-FN** |
| Title: | **relative to driving under the influence of drugs.** |
| Date: | **February 21, 2012** |
| Consent Calendar: | **NO** |
| Recommendation: | **INEXPEDIENT TO LEGISLATE** |

## STATEMENT OF INTENT

This bill greatly expands prohibitions on drivers of cars, boats and snowmobiles to include all chemical substances, whether natural or synthetic if they lead to driving under the influence. Caffeine, vitamins, fragrances and all prescription drugs would now quality a driver additional penalties if the driver is under their influence. This law is impractical and virtually unenforceable. While there are proven tests for alcohol concentration in breath or blood, there is no such definitive test for thousands of common substances.

Rep. Mark Warden
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

**HB1699-FN,** relative to driving under the influence of drugs. **INEXPEDIENT TO LEGISLATE.** Rep. Mark Warden for the **Minority** of CRIMINAL JUSTICE AND PUBLIC SAFETY. This bill greatly expands prohibitions on drivers of cars, boats and snowmobiles to include all chemical substances, whether natural or synthetic if they lead to driving under the influence. Caffeine, vitamins, fragrances and all prescription drugs would now quality a driver additional penalties if the driver is under their influence. This law is impractical and virtually unenforceable. While there are proven tests for alcohol concentration in breath or blood, there is no such definitive test for thousands of common substances.

Original: House Clerk
Cc: Committee Bill File

**HB 1699-FN relative to driving under the influence of drugs.**

**This bill greatly expands prohibitions on drivers of cars, boats and snowmobiles to include all chemical substances, whether natural or synthetic if they lead to driving under the influence. Caffeine, vitamins, fragrances and all prescription drugs would now quality a driver additional penalties if the driver is under their influence. This law is impractical and virtually unenforceable. While there are proven tests for alcohol concentration in breath or blood, there is no such definitive test for thousands of common substances.**

**Rep. Mark Warden**
**For the Minority**

Rep. Elaine Sanford

# MINORITY REPORT

COMMITTEE: CJPS

BILL NUMBER: HB ~~[redacted]~~ ~~[redacted]~~ 1699-FN

TITLE: Rel. to driving under the influence of drugs

DATE: 02/06/12 CONSENT CALENDAR: YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS W/ AMENDMENT

Amendment No.

Per Chair 2/21/12 ☒ INEXPEDIENT TO LEGISLATE

☐ RETAINED

☐ INTERIM STUDY (Available only 2nd year of biennium)

STATEMENT OF INTENT:

This bill greatly expands prohibitions on drivers of cars, boats and snowmobiles to include all chemical substances, whether natural or synthetic if they lead to driving under the influence. Caffeine, vitamins, fragrances and all prescription drugs would now qualify a driver for additional penalties if the driver is under their influence. This law is impractical and virtually unenforceable. While there are proven tests for alcohol concentration in breath or blood, there is no such definitive test for thousands of common substances.

COMMITTEE VOTE: _____

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. Mark Warden

For the Committee

Rep. Mark Warden

Rev. 07/30/99