LEGISLATIVE COMMITTEE MINUTES

HB287

Bill as Introduced

HB 287 - AS INTRODUCED

2023 SESSION

23-0541
04/05

HOUSE BILL ***287***

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

SPONSORS: Rep. Newell, Ches. 4; Rep. Read, Rock. 10; Rep. Popovici-Muller, Rock. 17; Rep. Wheeler, Hills. 33; Rep. Seibert, Hills. 21

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill amends the definition of drug paraphernalia in the controlled drug act and repeals testing equipment from the definition of drug paraphernalia.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 287 - AS INTRODUCED

23-0541
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

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

1 Controlled Drug Act; Definition of Drug Paraphernalia. Amend the introductory paragraph in RSA 318-B:1, X-a to read as follows:

X-a. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use or customarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, [~~testing, analyzing,~~] packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

2 Repeal. RSA 318-B:1, X-a(d), relative to testing equipment in the definition of drug paraphernalia, is repealed.

3 Effective Date. This act shall take effect 60 days after its passage.

HB 287 - AS INTRODUCED

LBA
23-0541
12/5/22

HB - FISCAL NOTE
AS INTRODUCED

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

FISCAL IMPACT: **[X] State** **[X] County** **[ ] Local** **[ ] None**

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

METHODOLOGY:

This bill exempts fentanyl test strips from the definition of drug paraphernalia. This bill would impact penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer misdemeanor charges would be brought because of the changes contained in this bill in order to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	$119	$122	$122
Appeals	Varies	Varies	Varies

Judicial Council	FY 2023	FY 2024
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	$300/Case $70 administrative fee $100 incarceration fee	$300/Case $70 administrative fee $100 incarceration fee

	(If applicable)	(If applicable)
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	$90/Hour up to $2,000	$90/Hour up to $2,000

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.

Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	$64,223	$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	$6,123	$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	$688	$688

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

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

HB 287-FN - AS AMENDED BY THE SENATE

06/01/2023 2060s

2023 SESSION

23-0541
04/05

HOUSE BILL ***287***

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

SPONSORS: Rep. Newell, Ches. 4; Rep. Read, Rock. 10; Rep. Popovici-Muller, Rock. 17; Rep. Wheeler, Hills. 33; Rep. Seibert, Hills. 21

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill removes fentanyl and xylazine testing paraphernalia in certain instances from the definition of drug paraphernalia in the controlled drug act.

Explanation: Matter added to current law appears in ***bold italics.***
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HB 287-FN - AS AMENDED BY THE SENATE

06/01/2023 2060s

23-0541
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

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

1 New Paragraph; Occupations and Professions; Controlled Drug Act; Definitions. Amend RSA 318-B:1 by inserting after paragraph X-a the following new paragraph:

X-b. Notwithstanding the provisions of RSA 318-B:1, X-a, "drug paraphernalia" shall not include fentanyl test strips, xylazine test strips, or other materials used or intended for use in testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog in a substance, unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding pursuant to RSA 318-B:2, I.

2 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0541
12/5/22

HB - FISCAL NOTE
AS INTRODUCED

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

FISCAL IMPACT: **[X] State** **[X] County** **[ ] Local** **[ ] None**

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Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
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METHODOLOGY:

This bill exempts fentanyl test strips from the definition of drug paraphernalia. This bill would impact penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer misdemeanor charges would be brought because of the changes contained in this bill in order to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
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Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	$300/Case $70 administrative fee	$300/Case $70 administrative fee

	$100 incarceration fee (If applicable)	$100 incarceration fee (If applicable)
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	$90/Hour up to $2,000	$90/Hour up to $2,000

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.

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Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

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

HB 287-FN - VERSION ADOPTED BY BOTH BODIES

06/01/2023 2060s

2023 SESSION

23-0541
04/05

HOUSE BILL ***287***

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

SPONSORS: Rep. Newell, Ches. 4; Rep. Read, Rock. 10; Rep. Popovici-Muller, Rock. 17; Rep. Wheeler, Hills. 33; Rep. Seibert, Hills. 21

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

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HB 287-FN - VERSION ADOPTED BY BOTH BODIES

06/01/2023 2060s

23-0541
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

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

1 New Paragraph; Occupations and Professions; Controlled Drug Act; Definitions. Amend RSA 318-B:1 by inserting after paragraph X-a the following new paragraph:

X-b. Notwithstanding the provisions of RSA 318-B:1, X-a, "drug paraphernalia" shall not include fentanyl test strips, xylazine test strips, or other materials used or intended for use in testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog in a substance, unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding pursuant to RSA 318-B:2, I.

2 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0541
12/5/22

HB - FISCAL NOTE
AS INTRODUCED

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

FISCAL IMPACT: **[X] State** **[X] County** **[ ] Local** **[ ] None**

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
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Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
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METHODOLOGY:

This bill exempts fentanyl test strips from the definition of drug paraphernalia. This bill would impact penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer misdemeanor charges would be brought because of the changes contained in this bill in order to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

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It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

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

CHAPTER 186
HB 287-FN - FINAL VERSION

06/01/2023 2060s

2023 SESSION

23-0541
04/05

HOUSE BILL ***287-FN***

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

SPONSORS: Rep. Newell, Ches. 4; Rep. Read, Rock. 10; Rep. Popovici-Muller, Rock. 17; Rep. Wheeler, Hills. 33; Rep. Seibert, Hills. 21

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill removes fentanyl and xylazine testing paraphernalia in certain instances from the definition of drug paraphernalia in the controlled drug act.

Explanation: Matter added to current law appears in ***bold italics.***
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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 186
HB 287-FN - FINAL VERSION

06/01/2023 2060s

23-0541
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

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

186:1 New Paragraph; Occupations and Professions; Controlled Drug Act; Definitions. Amend RSA 318-B:1 by inserting after paragraph X-a the following new paragraph:

X-b. Notwithstanding the provisions of RSA 318-B:1, X-a, "drug paraphernalia" shall not include fentanyl test strips, xylazine test strips, or other materials used or intended for use in testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog in a substance, unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding pursuant to RSA 318-B:2, I.

186:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: August 04, 2023
Effective Date: October 03, 2023

Amendments

Sen. Carson, Dist 14
May 9, 2023
2023-1710s
07/05

Amendment to HB 287-FN

Amend the title of the bill by replacing it with the following:

AN ACT removing fentanyl testing equipment from the definition of drug paraphernalia in the controlled drug act.

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

1 New Paragraph; Occupations and Professions; Controlled Drug Act; Definitions. Amend RSA 318-B:1 by inserting after paragraph X-a the following new paragraph:

X-b. Notwithstanding the provisions of RSA 318-B, X-a, "drug paraphernalia" shall not include fentanyl test strips xylazine, test strips, or other ... or other materials used or intended for use in testing for the presence of fentanyl or xylazine or a fentanyl analog or xylazine analog in a substance, unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding pursuant to RSA 318-B:2, I.

2 Effective Date. This act shall take effect 60 days after its passage.

DRAFT

xylazine

2023-1710s

AMENDED ANALYSIS

This bill removes fentanyl testing paraphernalia in certain instances from the definition of drug paraphernalia in the controlled drug act.

UNAPPROVED

Sen. Watters, Dist 4
May 15, 2023
2023-1828s
07/05

Amendment to HB 287-FN

Amend the title of the bill by replacing it with the following:

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act; and relative to the use of harm reduction services to treat alcohol and other substance misuse.

Amend the bill by replacing all after section 2 with the following:

3 Governor's Commission. Amend the introductory paragraph of RSA 12-J:1 and RSA 12-J:1, I to read as follows:

12-J:1 Commission Established; Membership; Terms. There is hereby established a commission which shall serve in an advisory capacity to the governor and the general court regarding the delivery of effective and coordinated alcohol and ***other*** drug ~~[abuse]~~ ***misuse*** prevention, ***including harm reduction,*** treatment, and recovery services throughout the state. The commission shall consist of the following members:

I. Seven public members, 2 of whom shall be professionals knowledgeable about alcohol and ***other*** drug ~~[abuse]~~ ***misuse*** prevention, ***including harm reduction,*** one of whom shall be appointed by the governor and one of whom shall be appointed by the senate president; 2 of whom shall be professionals knowledgeable about alcohol and ***other*** drug ~~[abuse]~~ ***misuse*** treatment, one of whom shall be appointed by the governor and one of whom shall be appointed by the speaker of the house of representatives; 2 of whom shall be public members who are not professionals within the alcohol and drug ~~[addiction]~~ ***misuse*** prevention and treatment system, one of whom shall be appointed by the senate president and one of whom shall be appointed by the speaker of the house of representatives; and one member in long-term recovery, appointed by the governor.

4 New Subparagraph; Members of Commission. Amend RSA 12-J:1, IV(a) by inserting after subparagraph (7) the following new subparagraph:

(8) The president of the New Hampshire Association of Chiefs of Police, or designee.

5 Organization of Commission; Task Force. Amend RSA 12-J:2, II(a)(1) to read as follows:

(1) Prevention ***and harm reduction.***

6 Organization of Commission; Task Force. Amend RSA 12-J:2, II-a to read as follows:

II-a. The chairperson shall create a budget task force comprised of the individuals listed in RSA 12-J:1, III(a) to report biannually on financial expenditures for substance ~~[abuse]~~ ***misuse*** related work throughout state government as detailed in RSA 12-J:4, III and recommend budget

APPROVED

policy priorities to the commission regarding the allocation of funding alcohol and ***other*** drug prevention, ***harm reduction,*** treatment, and recovery services across state agencies and throughout the state.

7 Commission Duties. Amend RSA 12-J:3, I and II to read as follows:

I. Develop and revise, as necessary, a statewide plan for the effective prevention of alcohol and ***other*** drug [~~abuse~~] ***misuse, including harm reduction,*** particularly among youth, and a comprehensive system of treatment and recovery services for individuals and families affected by alcohol and ***other*** drug [~~abuse~~] ***misuse. Nothing in RSA 12-J should be construed to limit care of chronic pain and hospice and palliative care patients, including use of the term "misuse" which shall be utilized, as intended, to broaden the scope of work across the substance use continuum of care.*** The statewide plan shall:

(a) Identify the causes, the nature and scope, and the impact of alcohol and ***other*** drug [~~abuse~~] ***misuse*** in New Hampshire.

(b) Identify and prioritize unmet needs for prevention, ***harm reduction,*** treatment, and recovery services.

(c) Recommend initiatives and policy considerations to the general court to reduce the incidence of alcohol and ***other*** drug [~~abuse~~] ***misuse*** in New Hampshire.

(d) Identify and quantify public and private resources available to support alcohol and ***other*** drug [~~abuse~~] ***misuse*** prevention, ***harm reduction,*** treatment, and recovery.

(e) Specify additional resources necessary to address unmet needs for prevention, ***harm reduction,*** treatment, and recovery.

(f) Specify evaluation and monitoring methodology.

II. Advise the governor and general court on and promote the development of effective community-based alcohol and ***other*** drug [~~abuse~~] ***misuse*** prevention ***and harm reduction*** strategies.

8 Meetings and Reports. Amend RSA 12-J:4, II to read as follows:

II. The commission shall submit an annual report to the governor, speaker of the house of representatives, president of the senate, chairpersons of the house and senate finance committees, chairperson of the house health, human services and elderly affairs committee, the chairperson of the senate health and human services committee, and the chairperson of the fiscal committee of the general court by October 1 of each year regarding the activities of the commission. The annual report shall:

(a) Identify alcohol and ***other*** drug [~~abuse~~] ***misuse*** prevention, ***harm reduction,*** treatment, and recovery services and programs provided by state departments and agencies or funded in whole or in part by state or federal funds;

(b) Indicate the progress made during the prior year toward the implementation of the statewide plan developed by the commission pursuant to RSA 12-J:3, I;

DRAFT APPROVED

(c) Recommend any revisions to the statewide plan developed pursuant to RSA 12-J:3, I;

(d) Identify and prioritize unmet needs for prevention, ***harm reduction,*** treatment, and recovery;

(e) Indicate the progress, or lack thereof, in addressing the unmet needs;

(f) Recommend initiatives and/or policy considerations to the governor and the general court to address the unmet needs;

(g) Specify the resources and any legislation necessary to support existing programs for prevention, ***harm reduction,*** treatment, and recovery and to develop, implement, support, and evaluate the initiatives recommended by the commission;

(h) In even-numbered years the report may include specific recommendations for funds to be included in the next state biennial budget to support alcohol and ***other*** drug ~~[abuse]~~ ***misuse*** prevention, ***harm reduction,*** treatment, and recovery services and programs; and

(i) Incorporate the findings and recommendations of the report required under paragraph II-a and make specific findings and recommendations regarding public awareness, education, and legislation to address the dangers of synthetic drugs.

9 Meetings; Report. Amend the introductory paragraph of RSA 12-J:4, III(b) to read as follows:

(b) The commission shall submit a mid-year report to the governor, speaker of the house of representatives, president of the senate, chairpersons of the house and senate finance committees, chairperson of the house health, human services and elderly affairs committee, chairperson of the senate health and human services committee, and chairperson of the fiscal committee of the general court by March 1 of each year regarding the current state of drug ~~[abuse]~~ ***misuse***, prevention, ***harm reduction,*** treatment, and recovery. The commission shall include a dashboard of the following, both in the interim and the annual report as required in RSA 12-J:4, II, that includes but is not limited to:

10 Report; Amend RSA 12-J:5, I(a)(1) to read as follows:

(1) Treatment programs, ***including harm reduction***.

11 New Subparagraph; Opioid Abatement Advisory Commission Duties. Amend RSA 126-A:86, I(b) by inserting after subparagraph (16) the following new subparagraph:

(17) Upon consultation with the governor's commission on alcohol and other drugs, provide funding for syringe service programs as authorized in RSA 318-B:43, including harm reduction supplies.

12 New Section; Substance Use Disorder Access Points. Amend RSA 126-A by inserting after section 98 the following new section:

126-A:99 Substance Use Disorder Access Points Established.

I. With the availability of sufficient federal funding, the department of health and human services shall establish and administer statewide access points for delivery of substance use services and supports. The access points shall provide information and referrals for screening and

evaluation; treatment, including medications for substance use disorders; prevention, including naloxone; supports and services to assist in long-term recovery; and peer recovery support services.

II. The commissioner of the department of health and human services shall include the administration and operation of the access points in the department's report to the governor's commission on alcohol and other drug misuse prevention, treatment, and recovery under RSA 12-J:4, III.

III. The program shall be funded through the state opioid response grant from the Substance Abuse and Mental Health Services Administration. In addition, the department may accept funds from any source, including state appropriations, federal funds, and private gifts, grants, or donations to operate and sustain the access points.

13 Syringe Service Programs; Activities. Amend RSA 318-B:43, II(b) to read as follows:

(b) Coordinate and collaborate with other local agencies, ***including criminal justice,*** organizations, and providers involved in comprehensive prevention programs for people who inject drugs to minimize duplication of effort.

14 Syringe Service Programs; Activities. RSA 318-B:43, II by inserting after subparagraph (b) the following new subparagraph:

(b-1) Consult and inform municipal law enforcement agencies concerning syringe service program and harm reduction activities.

15 Syringe Service Programs; Funding. Amend RSA 318-B:43, III to read as follows:

III. Nothing in this section shall be construed to prohibit the department of health and human services from administering and/or disbursing federal or other funds to syringe service programs authorized under this section. ~~[The use of state general funds shall be prohibited unless otherwise appropriated by the general court or if deemed necessary to control a disease outbreak pursuant to RSA 141-C:3.]~~

16 New Section; Controlled Drug Act; Syringe Service Programs. Amend RSA 318-B by inserting after section 43 the following new section:

318:43-a Syringe Service Programs; Authorized Activities and Funding Sources.

I. Notwithstanding any other law to the contrary, any person authorized under RSA 318-B:43 to operate a syringe service program may engage in eligible activities, as defined in paragraph IV.

II. State funds including, but not limited to, funds received by the state in the New Hampshire opioid litigation settlement may be used to support the activities of syringe service programs as permitted under this section and RSA 318-B:43.

III. No person shall be prohibited from using federal funds for eligible activities and syringe service programs as authorized in RSA 318-B:43, so long as the use of the federal funds is consistent with federal law and any rules governing use of the funds.

IV. In this section:

AMENDED

(a) "Drug checking" means the process of identifying, analyzing, or detecting the composition of a drug or the presence or composition of an unexpected substance within the drug.

(b) "Drug checking equipment" means equipment, products, or materials used, designed for use, or intended for use to perform drug checking, including materials and items used by the person operating the equipment or products to store, measure, or process samples for analysis. Drug checking equipment includes fentanyl test strips, other immunoassay drug testing strips, colorimetric reagents, spectrometers such as Fourier Transform Infrared and Raman spectrometers, and equipment that uses high-performance liquid chromatography, gas chromatography, mass spectrometry, and nuclear magnetic resonance techniques. Drug checking equipment does not include the substances being analyzed, drug packaging, or drug supplies.

(c) "Drug supplies" means hypodermic needles, syringes, preparation containers, cotton, filters, alcohol wipes, water, saline, tourniquets, disposal containers, wound care items, pipes, bubbles, snorting straws, pipe covers, and other items used in the consumption of drugs;

(d) "Eligible activities" means:

(1) Purchasing, obtaining, providing, transporting, distributing, using, or evaluating the use of drug checking equipment;

(2) Training, both initial and ongoing, about drug checking equipment, the process of drug checking, and the purpose of drug checking;

(3) Technical assistance concerning drug checking equipment, the process of drug checking, and the purpose of drug checking; and

(4) Providing drug supplies.

17 New Paragraph; Physicians Assistants. Amend RSA 328-D:3 by inserting after paragraph III the following new paragraph:

IV. Each applicant for the first renewal of a license under this chapter shall show proof of medical education on substance misuse disorder harm reduction including medication assisted treatment.

18 Physicians and Surgeons; Continuing Medical Education Requirement. Amend RSA 329:16-g to read as follows:

329:16-g Continuing Medical Education Requirement. As a condition of renewal of license, the board shall require each licensee to show proof at least at every biennial license renewal that the licensee has completed 100 hours of approved continuing medical education program within the preceding 2 years. For the purposes of this section, an approved continuing medical education program is a program designed to continue the education of the licensee in current developments, skills, procedures, or treatment in the licensee's field of practice, which has been certified by a national, state, or county medical society or college or university. ***All licensees required to register with the controlled drug prescription health and safety program shall complete 3 credit hours of approved online continuing education or pass an online examination in the***

area of pain management or addiction disorders. There shall be a complete audit of all continuing education credits annually by the New Hampshire Medical Society. Each licensee shall submit a continuing medical education report with copies of continuing medical education course certificates earned by the licensee and other documents which establish that continuing medical education course requirements have been met, using a form approved by the board. The complete audit shall include the collection, review, verification, and preservation of the continuing medical education documentation of each licensed physician and a report which records the credits awarded to each licensee during the 2-year period applicable to each licensee. The fee charged to licensees for continuing medical education verification shall not exceed 125 percent of the actual cost of providing the service. The New Hampshire Medical Society is prohibited from using any information from this program for promotional purposes or any other purpose not necessary for continuing education verification.

19 New Paragraph; Definition of Drug Misuse Added. Amend RSA 318-B:1 by inserting after paragraph XV the following new paragraph:

XV-a. "Drug misuse" refers to the use of a substance for a purpose that is not consistent with legal or medical guidelines.

20 New Paragraph; Governor's Commission on Alcohol and Drug Abuse Prevention, Treatment, and Recovery; Definition of Harm Reduction. Amend RSA 12-J:2 by inserting after paragraph IV the following new paragraph:

V. For the purposes of this chapter, RSA 126:A, RSA 318-B:93, RSA 328-D:3, and RSA 329:16-g, "harm reduction" is an approach that emphasizes engaging directly with people who use alcohol and other drugs to prevent overdose and infectious disease transmission, improve the physical, mental, and social wellbeing of those served, and offer low-threshold options for accessing substance use disorder treatment and other health care services.

21 Effective Date.

I. Sections 1-2 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect July 1, 2023.

UNAPPROVED

2023-1828s

AMENDED ANALYSIS

This bill:

I. Amends the definition of drug paraphernalia in the controlled drug act and repeals testing equipment from the definition of drug paraphernalia.

II. Defines alcohol and drug abuse prevention programs under RSA 12-J to include harm reduction services; establishes the doorways program to provide drug and alcohol abuse information, referral, and treatment services; incorporates recommendations of the governor's commission on alcohol and other drugs in the use of opioid abatement fund expenditures; expands the syringe services program; and addresses license renewal criteria for physicians and physician assistants.

UNAPPROVED

Senate Judiciary
May 30, 2023
2023-2060s
07/05

Amendment to HB 287-FN

Amend the title of the bill by replacing it with the following:

AN ACT removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

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

1 New Paragraph; Occupations and Professions; Controlled Drug Act; Definitions. Amend RSA 318-B:1 by inserting after paragraph X-a the following new paragraph:

X-b. Notwithstanding the provisions of RSA 318-B:1, X-a, "drug paraphernalia" shall not include fentanyl test strips, xylazine test strips, or other materials used or intended for use in testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog in a substance, unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding pursuant to RSA 318-B:2, I.

2 Effective Date. This act shall take effect 60 days after its passage.

2023-2060s

AMENDED ANALYSIS

This bill removes fentanyl and xylazine testing paraphernalia in certain instances from the definition of drug paraphernalia in the controlled drug act.

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Daryl Abbas, Member
Sen Rebecca Whitley, Member
Sen Shannon Chandley, Member

Date: April 26, 2023

HEARINGS

Tuesday	05/02/2023
(Day)	(Date)

Judiciary	State House 100	1:00 p.m.
(Name of Committee)	(Place)	(Time)

1:00 p.m.	**HB 517**	relative to background checks for surrogate parents.
1:15 p.m.	**HB 397**	relative to the prohibition of the possession of hypodermic needles by minors.
1:30 p.m.	**HB 376**	establishing a committee to study the current education, training, and requirements for personnel employed as emergency dispatchers and 911 telecommunicators for police, fire, and emergency medical organizations.
1:45 p.m.	**HB 287**	removing testing equipment from the definition of drug paraphernalia in the controlled drug act.
2:00 p.m.	**HB 114**	relative to the age at which a minor may receive mental health treatment without parental consent.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 517

Rep. Myler	Rep. Woodcock	Rep. Cornell	Rep. Tanner

HB 397

Rep. Phillips	Rep. Yokela	Rep. Layon	Rep. Love
Rep. Popovici-Muller			

HB 376

Rep. Trottier	Rep. Bordes		

HB 287

Rep. Newell	Rep. Read	Rep. Popovici-Muller	Rep. Wheeler
Rep. Seibert			

HB 114

Rep. Bouchard	Rep. Cannon	Rep. Almy	Rep. M. Smith
Rep. Levesque	Rep. Shurtleff	Rep. Long	Rep. Infantine
Rep. Beaulieu	Rep. Burroughs	Sen. Watters	Sen. Soucy

Matthew Schelzi 271-3266

Sharon M. Carson
Chairman

Senate Judiciary Committee

Matthew Schelzi 271-3266

HB 287-FN, removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

Hearing Date: May 2, 2023

Time Opened: 1:45 p.m. **Time Closed:** 2:18 p.m.

Members of the Committee Present: Senators Carson, Gannon, Abbas, Whitley and Chandley

Members of the Committee Absent : None

Bill Analysis: This bill amends the definition of drug paraphernalia in the controlled drug act and repeals testing equipment from the definition of drug paraphernalia.

Sponsors:

Rep. Newell	Rep. Read	Rep. Popovici-Muller
Rep. Wheeler	Rep. Seibert	

Who supports the bill: Rep. Linda Harriott-Gathright (Hills. 10), Elizabeth Sargent (NH Society of Health System Pharmacists), Frank Knaack (ACLU-NH), Jenny O'Higgins (DHHS), Jake Berry (New Futures), Anena Hansen, Brian Harlow, Sebastian Fuentes (RAD NH), Caroline McCaughey, Rep. Jodi Newell (Ches. 4), Lauren McGinley, Hayden Smith (New Hampshire Youth Movement), Mya Hall, Narayan Sajeev, Haley Demers, Elizabeth Lewis, Robert Feder, Jim Doyle, Bobby Williams, Kathy Staub, Sandra Montminy, Heather Stockwell, Jay Pereira, Rep. Amanda Toll (Ches. 15), Iam Freeman (Shire Free Church), Todd Sahba, Chandra Boudreau, Joseph Rowell, Michael Kirker, Crystal Kirker, Mary Grace Allen, Alicia Manion, Sandy Allen, Jenny Bauer, Rep. David Meuse (Rock. 37), Laura Byrne (HIV/HVC Resource Center), and Lois Cote.

Who opposes the bill: None.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative Jodi Newell said this bill would remove testing and analyzing equipment from the definition of drug paraphernalia in the Controlled Drug Act. Overdose deaths have continued to increase, and about 109,000 people died from an

overdose last year. She said these deaths were preventable, and the state could take action by encouraging people to test their supplies. This would help individuals struggling with substance misuse to make informed decisions. If there is fentanyl or xylazine in a drug, an individual's life opportunities could be cut short. Rep. Newell told a personal story about the struggles her fiancé faced, and he didn't have the time to get to a place where he could get help. House Bill 287 would be a tool to keep people safe. Under existing law, a person can be held legally responsible for holding testing equipment even though it's regularly distributed by health care professionals.

Jenny O'Higgins, Legislative Liaison for the Department of Health and Human Services (DHHS) said they supported this bill. There has been a significant increase of fentanyl in the illicit drug supply, which has increased overdose fatalities. Testing strips are one of many harm reduction strategies to curb overdose fatalities. In April 2021, the use of federal funding for fentanyl test strips was permitted. Test strips can help reduce the risk of overdoses and empower community members to make more informed choices. Distribution can help harm reduction programs and provide opportunities for law enforcement to engage community members in health care services, social supports, and treatment and recovery supports. Substance misuse disorder is defined as compulsive use despite negative consequences; therefore, the first step is to keep people alive to provide them with an opportunity to get well.

Senator Gannon asked if she feared this would give someone a false sense of security; therefore, they would feel more empowered to continue drug use.

Ms. O'Higgin said the research has shown that people will have more information to utilize harm reduction strategies.

Senator Carson asked how sophisticated the testing strips were and how they could be acquired.

Ms. O'Higgins said they use the same technology as an over-the-counter pregnancy test. Originally, they were created to test urine; however, the substance can now be mixed with water for testing. Available test strips can detect fentanyl and at least 10 of its analogues. She believed it was 96% to 100% accurate in detecting the presence of fentanyl. They do not detect the amount; it is just about its presence.

Sen. Carson asked if they are available at pharmacies or retailers.

Ms. O'Higgins said they are available as urine analysis tests. The distribution of these strips through harm reduction programs and the ability to utilize federal funding for them were the reasons to ensure there was no legal ambiguity.

Sen. Gannon asked what type of drugs these strips were used for.

Ms. O'Higgins said the scope of this legislation wasn't specific to fentanyl test strips. When the CDC and SAMHSA opened up federal funding, they talked about fentanyl test strips. There are other test strips in production at this time. This bill would allow New Hampshire to catch up to some of the testing that has been utilized in neighboring states.

Jake Berry, Vice President of Policy at New Futures, emphasized their strong support for HB 287. New Hampshire has continued to recognize the importance of harm reduction and prioritizing those strategies as part of a comprehensive approach to substance misuse. Fentanyl test strips are a crucial evidence-based harm reduction strategy that has been shown to save lives. Initial data has shown that fentanyl test strips are more reliable, and they have less false positives. He urged the Committee to pass this bill.

Frank Knaack, Policy Director at ACLU-NH, said they strongly supported HB 287. This bill provided an opportunity to build on the successes of the harm reduction strategy as well as ensure tools are provided to save lives. There have been concerns that test strips would encourage drug use; however, the Director of the Office of Drug Control Policy said there is no scientific evidence that drug use is encouraged. There have been concerns that these would be a tool for people to determine potency; however, these testing strips do not show purity. He reiterated that the CDC and American Medical Association have emphasized that drug testing equipment are an important tool for harm reduction.

Senator Abbas wondered if this bill went further than fentanyl test strips.

Mr. Knaack said yes because it could be used on other compounds later on.

Sen. Abbas asked if it could allow the measurement of how much fentanyl is in certain drugs.

Mr. Knaack said this was important from a harm reduction perspective.

Anena Hansen said this bill would make it easier for someone to access a tool that could keep them alive. She read from her personal testimony about her late life partner, a former state representative, who suffered from a drug overdose. She said these test strips represent a second chance, and they should be decriminalized. New Hampshire drug overdose rates are 50% higher than the national average, and she said drugs are routinely contaminated with lethal amounts of fentanyl. She concluded that it shouldn't be a crime to try to stay alive to stop using these drugs.

Brian Harlow, resident of Concord, supported HB 287. He said this bill contained wording that would save lives. He said those who use opioids and other drugs are veterans, victims of domestic violence and sexual assault, and those who suffered adverse childhood events. He said the gateway drug has always been trauma. Users understand how dangerous substances can be; however, they continue to use them because their brain has been hijacked. In March, he celebrated thirty years of sobriety. He stated that the War on Drugs has been particularly hard on people of color, and protections were necessary to ensure that testing strips aren't used to imply guilt or for the searching of a vehicle.

Caroline McCaughey, resident of Portsmouth, told her personal story of being a heroin addict. She noted people can and do recover, but you can't recover if you're dead. She said harm reduction saved her life because she had access to clean needles. Currently, the biggest risk faced by drugs users are the drugs themselves. More than 106,000 people died from a drug overdose last year, and 70% of those deaths involved

fentanyl. Testing equipment, such as test strips, can determine if there is fentanyl in a pill. She noted the state should promote drug testing. She said she got a second chance at life, and she wanted others to have a second chance as well. She urged the Committee to support this bill.

Representative Terry Roy, Chair of the House Criminal Justice and Public Safety Committee, said this bill passed for a variety of reasons. The Committee felt it was an important opportunity for parents to have these tests, so if they find something in the possession of their children, then it can be tested.

Representative Jonah Wheeler, a member of the House Criminal Justice and Public Safety Committee, supported this bill. He said this isn't about encouraging people to use drugs. He said that drugs aren't as pure as they once were. He said giving people the opportunity to test these drugs, without the fear of having their livelihoods taken away, is something the state should allow. He noted that the vote was unanimous out of the House Criminal Justice and Public Safety Committee.

Lauren McGingly, Executive Director of the NH Harm Reduction Coalition, said the Coalition has overseen many of the harm reduction programs throughout the state. Under current law, they're the only ones protected to pass out these test strips. These test strips are effective in preventing fatal and non-fatal overdoses, especially among those using drugs where there's no expectation of fentanyl in them. She said they have just received xylazine test strips. Xylazine can cause infections, abscesses, endocarditis, and wounds all over the body. Often wounds caused by xylazine can take up to 7 to 9 months to resolve. She said the use of fentanyl drug strips would allow people to make better informed decisions.

Summary of testimony presented in opposition: None.

Neutral Information Presented: None.

mjs
Date Hearing Report completed: May 5, 2023

Speakers

Senate Judiciary Committee
SIGN-IN SHEET

Date: Tuesday May 2nd, 2023 **Time:** 1:45 p.m.

HB 287 AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

Name/Representing *(please print neatly)*

Rep Linda Harriott-Gathright	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
Elizabeth Sargent, NH Society Health-System Pharmacists	Support ☒	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☒
Frank Knaack, ACLU-NH	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☑	No ☐
Jenny O'Higgins, DHHS	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☑	No ☐
Jake Berry New Futures	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☑	No ☐
ANENA HANSEN	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☑	No ☐
BRIAN HARLOW	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☑	No ☐
Sebastian Fuentes RADNH	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☑
Caroline McLaughney	Support ☑	Neutral ☐	Oppose ☐	Speaking?	Yes ☑	No ☐
Rep. Newell	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐

Senate Judiciary Committee
SIGN-IN SHEET

Date: Tuesday May 2nd, 2023 **Time:** 1:45 p.m.

HB 287 AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

Name/Representing *(please print neatly)*

AH Lauren McGinley	Support ☑	Neutral ☐	Oppose ☐	Speaking? Yes	Yes ☑	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Neutral ☐	Oppose ☐	Speaking?	Yes ☐	No ☐

Senate Remote Testify

Judiciary Committee Testify List for Bill HB287 on 2023-05-02

Support: 27 Oppose: 0

Name	Title	Representing	Position
Smith, Hayden	A Lobbyist	New Hampshire Youth Movement	Support
Hall, Mya	A Member of the Public	Myself	Support
Sajeev, Narayan	A Member of the Public	Myself	Support
Demers, Haley	A Member of the Public	Myself	Support
Lewis, Elizabeth	A Member of the Public	Myself	Support
FEDER, Robert	A Member of the Public	Myself	Support
Doyle, Jim	A Member of the Public	Myself	Support
Williams, Bobby	An Elected Official	Myself	Support
Staub, Kathy	An Elected Official	Myself	Support
Montminy, Sandra	A Member of the Public	Myself	Support
Stockwell, Heather	A Member of the Public	Myself	Support
Pereira, Jay	A Member of the Public	Myself	Support
Toll, Amanda Elizabeth	An Elected Official	Cheshire 15	Support
Freeman, Ian	A Member of the Public	Shire Free Church	Support
Sahba, Todd	A Member of the Public	Myself	Support
Boudreau, Chandra	A Member of the Public	Myself	Support
Rowell, Joseph	A Member of the Public	Myself	Support
Kirker, Michael	A Member of the Public	Myself	Support
Kirker, Crystal	A Member of the Public	Myself	Support
Allen, Mary Grace	A Member of the Public	Myself	Support
Manion, Alicia	A Member of the Public	Myself	Support
Allen, Sandy	A Member of the Public	Myself	Support
Bauer, Jenny	A Member of the Public	Myself	Support
Meuse, David	An Elected Official	Rockingham 37	Support
Byrne, Laura	A Member of the Public	Myself	Support
Laura Byrne, HIV/HCV Resource Cen	A Member of the Public	Myself	Support
Cote, Lois	A Member of the Public	Myself	Support

Testimony

Senate Judiciary Testimony on HB 287

May 2nd, 2023

Good afternoon, members of the committee.

My name is Anena Hansen. I'm a resident of the Monadnock region, I'm a person in recovery from alcoholism, and I support HB 287, a little bill with big repercussions, because it makes it easier for people to possess a medical tool that can help to keep them alive.

I'll tell you one person who could theoretically have been kept alive by this legislation, and that's my late life partner, Phil Spagnuolo. During his time as state rep, he sat on the Health and Human Services committee, where he advocated for lifesaving interventions like this. Phil was fearless about sharing his story of substance addiction and recovery, right up until his untreated mental health issues got the better of him, he relapsed and, almost two years ago, he died in a Manchester drug den of a fentanyl overdose.

If I could go back, I would do anything to get some fentanyl test strips in his hands. I would say, honey, while we figure out how to get you the help you need, *let's keep you safe, no matter what.* I love test strips because every one represents a second chance for somebody's beloved to stay alive long enough to get well.

I now work in the field of addiction and trauma, where, in my professional capacity, I have periodically found myself driving around with fentanyl strips by the boxful. As a person who enjoys the protection of white privilege, if I get pulled over with a trunkful of test strips I have little concern that I'll face charges, so it's important to me also that test strips be decriminalized to protect people of color who dread exactly that.

Let's keep our focus on the big picture. NH's drug overdose rates are 54% higher than the national average. Addressing our state's drug problem is a big issue, and we mustn't get bogged down in little distractions. It's a crime to use drugs such as heroin, cocaine, or meth, all of which are now routinely contaminated with fentanyl in potentially lethal amounts, but it should not be a crime to try and stay alive long enough to stop using them.

At the end of this month I'll be seven years clean and sober, but it's not that long ago that I was snorting cocaine, thankfully before fentanyl became the threat it is today—I'm an addict, so

what do you think, was my life worth saving? Wouldn't Phil's have been? Isn't everyone's? It's not just our responsibility but our privilege to remove every obstacle to keeping people who use drugs alive long enough to recover.

So I'm asking, for Phil and for me and for all the people who want to beat their addiction and for all the people who love them, please support HB 287 and remove the possibility that anyone could face criminal charges for possession of fentanyl test strips, so we can keep our focus on addressing the very real problems around drug use in our state and help our citizens live to tell their recovery stories. Thank you very much.

Laura Byrne, Executive Director
HIV/HCV Resource Center
2 Blacksmith Street
Lebanon, NH 03766
(603) 448-8887, ext. 105
laura@h2rc.org

May 5, 2023

H.287 - Removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

Thank you for the opportunity to testify in support of H.287. My name is Laura Byrne and I am the Executive Director of the HIV/HCV Resource Center in Lebanon. We offer mobile syringe services in Grafton and Sullivan counties.

Offering fentanyl test strips to clients at our syringe service program is part of a harm reduction approach that allows clients to make informed decisions about the drugs that they use. Our clients report that they change their behavior when test strips indicate that there is fentanyl in their drug supply; they use smaller amounts, they use in the presence of someone else who can administer naloxone, and/or they do a "test shot."

Supplying fentanyl test strips to people who use drugs neither condones nor promotes drug use. It can, however, prevent fatal overdoses by alerting individuals to the presence of fentanyl in their drugs. This becomes especially important for people who are using stimulants and who do not expect to have fentanyl in their drug supply. Our clients report using the test strips to detect fentanyl in cocaine and methamphetamine.

According to the Office of the Chief Medical Examiner[1], out of the 55[2] confirmed drug deaths from January 1 to April 23, 2023, 16 of these involved a combination of fentanyl with either methamphetamine or cocaine (or both). It is possible that these individuals had no idea that they were using fentanyl.

Fentanyl test strips are a critical tool that can be used to prevent fatal overdoses. Removing testing equipment from the definition of drug paraphernalia in the controlled drug act will protect our staff and our clients from prosecution and will facilitate the continued distribution of fentanyl test strips to help protect individuals from fatal overdose.

Thank you for supporting H.287.

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[1] file:///C:/Users/Laura/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/KUE3NX07/2023%20Drug%20Data%20Update%204-10-23.pdf

[2] This number does not include the 73 deaths pending toxicality.

Frank Knaack
Policy Director
fknaack@aclu-nh.org
603.545.0433

Support HB 287 - Expand New Hampshire's Harm Reduction Strategy

HB 287 would remove drug testing equipment, including fentanyl test strips (FTS), from the definition of drug paraphernalia. Under current law, the possession with intent to distribute lifesaving drug testing equipment is an unclassified misdemeanor and punishable by up to one year in jail and a fine of $2,000.[i]

New Hampshire must build on its harm reduction successes. Drug overdose deaths in New Hampshire peaked at 490 in 2017.[ii] Fortunately, the New Hampshire legislature made naloxone available in 2015, which is an FDA approved medication that temporarily reverses an opioid overdose to provide crucial time for medical intervention.[iii] According to the New Hampshire Drug Monitoring Initiative, the availability of naloxone "very likely contributed to a decline in both overdose deaths and EMS provided Narcan administration through 2019."[iv] Between November 2021 and October 2022, the most current New Hampshire Drug Monitoring Initiative Drug Environment Report available, naloxone administered by EMS saved 865 lives.[v] It is past time to expand New Hampshire's data-supported harm reduction tools.

Drug testing kits are an additional proven strategy to save lives. FTS were specifically designed to prevent overdoses. According to the Centers for Disease Control, FTS "are a low-cost method of helping prevent drug overdoses and reducing harm. FTS are small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables). FTS provide people who use drugs and communities with important information about fentanyl in the illicit drug supply so they can take steps to reduce risk of overdose." Multiple studies have shown that FTS reduce overdose risk behavior and save lives.[vi] For example, a pilot program in Vancouver, Canada found that 79 percent of drugs checked had fentanyl and people who checked drugs were over 10 times more likely to reduce their dose and 25 percent less likely to overdose.[vii] In addition, according to the lead author of study in Rhode Island published in the International Journal of Drug Policy, "[w]e found that fentanyl test strips are an effective harm-reduction tool to prevent overdose."[viii] HB 287 will help reduce risky behavior and save lives.

FTS do not encourage drug use. According to the Dr. Rahul Gupta, the director of the Office of National Drug Control Policy, "[t]here is no scientific evidence to support this notion that harm-reduction services like fentanyl test strips somehow encourage drug use, but there is significant evidence to support the fact that these tools can save lives[.]"[ix] Lawmakers should separate fact from fiction and expand its available data-supported harm reduction tools.

Major governmental and non-governmental medical and public health agencies and organizations support access to fentanyl test strips and other drug-checking supplies as a harm reduction tool. The Centers for Disease Control and Prevention,[x] Substance Abuse and Mental Health Services Administration,[xi] and the American Medical Association[xii] have made clear that drug-testing equipment is an important tool for reducing harm and saving lives.

An increasing number of states permit the possession and distribution of drug testing equipment. As of August 31, 2022, 24 states, including our neighbors in VT, ME, and MA, have legalized the possession and distribution of drug testing equipment, with certain limitations.[xiii] Among these states, 10 states (AL, AZ, CT, LA, ME, NJ, NM, TN, WV, and WI) passed laws to permit the possession and/or distribution of drug checking equipment in just the 13 month period between August 1, 2021 and August 31, 2022.[xiv] New Hampshire should join this diverse, rapidly growing set of states.

Support HB 287 - Drug testing kits are a data-driven approach to saving lives and reducing harm in New Hampshire

Last updated January 17, 2023

[i] "Drug paraphernalia means all equipment, products and materials of any kind which are used or intended for use or customarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to: ... (d) Testing equipment used or intended for use or customarily intended for use in identifying, or analyzing the strength, effectiveness or purity of controlled substances." 318-B:1(X-a) "A person shall be guilty of a misdemeanor who: ... (c) Manufactures with the intent to deliver, delivers or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or possessed for one or more of the uses set forth in RSA 318-B:2, II." 318-B:26(III)

[ii] New Hampshire Drug Monitoring Initiative, October 2022 Report, *available at* https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents2/dmi-october2022.pdf.

[iii] *Id.*

[iv] *Id.*

[v] *Id.*

[vi] Maxwell Krieger, et. al., *Use of rapid fentanyl test strips among young adults who use drugs*, International Journal of Drug Policy, Nov. 2018, *available at* https://www.sciencedirect.com/science/article/abs/pii/S0955395918302469; *see also*, Nicholas Peiper, et. al., *Fentanyl test strips as an opioid overdose prevention strategy: Findings from a syringe services program in the Southeastern United States*, International Journal of Drug Policy, Jan. 2019, *available at* https://www.sciencedirect.com/science/article/pii/S0955395918302135; Centers for Disease Control and Prevention, *Fentanyl Test Strips: A Harm Reduction Strategy*, *available at* https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html.

[vii] Drug Policy Alliance, *Preventing Overdose Deaths with Drug Checking, available at* https://drugpolicy.org/sites/default/files/factsheet_drugcheckingmaryland_0.pdf.

[viii] Brown University, *Fentanyl test strips prove useful in preventing overdoses*, Press Release, *available at* https://www.brown.edu/news/2018-10-18/fentanyl.

[ix] Jan Hoffman, *Fentanyl Test Strips Highlight Rift in Nation's Struggle to Combat Drug Deaths*, NY Times, Oct. 1, 2022, *available at* https://www.nytimes.com/2022/10/01/health/fantanyl-test-strips.html#:~:text=%E2%80%9CThere%20is%20no%20scientific%20evidence,of%20National%20Drug%20Control%20Policy..

[x] Centers for Disease Control and Prevention, *Fentanyl Test Strips: A Harm Reduction Strategy*, *available at* https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20(FTS)%20are,%2C%20powder%2C%20and%20injectables ("Fentanyl test strips (FTS) are a low-cost method of helping prevent drug overdoses and reducing harm. FTS are small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables). FTS provide people who use drugs and communities with important information about fentanyl in the illicit drug supply so they can take steps to reduce risk of overdose.")

[xi] In its announcement that federal funding may now be used to purchase FTS, the interim leader at SAMHSA stated "This is a major step forward in the ongoing and critical work to prevent overdose and connect people who have substance use disorders to evidence-based treatment options[.] .... This will save lives by providing tools to identify the growing presence of fentanyl in the nation's illicit drug supply and – partnered with referrals to treatment – complement SAMHSA's daily work to direct help to more Americans." *See*, Centers for Disease Control and Prevention, *Federal Grantees May Now Use Funds to Purchase Fentanyl Test Strips*, Apr. 7, 2021, *available at* https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html.

[xii] American Medical Association policy: "Encourage[s] state and county medical societies to advocate for harm-reduction policies that provide civil and criminal immunity for the possession, distribution and use of "drug paraphernalia" designed for harm reduction from drug use, including but not limited to drug-contamination testing and injection-drug preparation, use and disposal supplies. Support[s] efforts to increase access to fentanyl test strips and other drug-checking supplies for the purpose of harm reduction."
See, Andis Robeznieks, *Harm-reduction efforts needed to curb overdose epidemic*, American Medical Association, Nov. 15, 2022, *available at* https://www.ama-assn.org/delivering-care/overdose-epidemic/harm-reduction-efforts-needed-curb-overdose-epidemic.

[xiii] The states include: AL (limited to fentanyl testing equipment), AK, AZ (limited to fentanyl testing equipment), CO, CT, DE (limited to fentanyl testing equipment), LA (limited to fentanyl testing equipment), ME, MD, MA, MI, MN (limited to fentanyl testing equipment), NE, NV, NJ (limited to fentanyl testing equipment), NY, RI, SC, TN, (limited to synthetic opioid testing equipment), VT, VA, WV, WI (limited to fentanyl testing equipment), and WY. Source: The Network for Public Health Law, *Harm Reduction and Overdose Prevention, 50-State Survey, Legality of Drug Checking Equipment in the United States*, August 2022 Update, *available at* https://www.networkforphl.org/wp-content/uploads/2023/01/Legality-of-Drug-Checking-Equipment-in-the-United-States-August-2022-Update.pdf.

[xiv] Corey Davis, *Legality of Drug Checking Equipment in the United States*, The Network for Public Health Law, *available at* https://www.networkforphl.org/resources/legality-of-drug-checking-equipment-in-the-united-states/.

Last updated January 17, 2023

May 2, 2023

The Honorable Sharon Carson, Chair
Senate Judiciary Committee
State House, Room 100
Concord, NH 03301

Dear Senator Carson and Honorable Members of the Committee:

New Futures is a nonprofit, nonpartisan organization that advocates, educates, and collaborates to improve the health and wellness of all New Hampshire residents through policy change. In this role, we work extensively with policy makers, stakeholders, and prevention partners to prevent and reduce alcohol and drug problems in our state. New Futures supports HB 287, because it is an evidence-based harm reduction strategy.

As a response to the state's opioid crisis when drug overdose deaths in New Hampshire peaked at 490 in 2017, New Futures supported harm reduction strategies such as making naloxone more widely available and the Good Samaritan law.[1] Because of these strategies, along with improvements made across the continuum of care for Substance Use Disorders, our state has seen a reduction in overdose deaths from 2018-2021, while other states continued to see increases in drug overdoses. [2]

Drug testing kits, such as fentanyl test strips (FTS) are an additional proven strategy to save lives. According to the Centers for Disease Control, FTS "are a low-cost method of helping prevent drug overdoses and reducing harm".[3] However, drug testing kits like fentanyl testing strips are illegal to possess in New Hampshire despite being a proven harm reduction tool. Fentanyl test strips are small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables). Recent reporting in New Hampshire indicates that fentanyl is routinely mixed with non-opioid drugs.[4] HB 287 would remove fentanyl testing strips and other drug testing kits from the definition of drug paraphernalia and would legalize the use of drug testing equipment.

Please find attached to New Futures testimony a fact sheet from the Public Health Law Network on the evidence for the effectiveness of FTS as a harm reduction tool. We ask that the committee for Ought to Pass on HB 287.

Sincerely,

Kathryn Frey

Kathryn (Kate) Frey, Vice President of Advocacy, New Futures

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[1] https://www.gencourt.state.nh.us/legislation/2015/HB0270.html
https://www.gencourt.state.nh.us/legislation/2015/HB0271.html

[2] https://www.dhhs.nh.gov/news-and-media/bucking-national-trend-overdose-deaths-new-hampshire-decline

[3] https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20(FTS)%20are,%2C%20powder%2C%20and%20injectables).

[4] https://newhampshirebulletin.com/briefs/state-officials-warn-of-increase-in-non-opioid-drugs-laced-with-fentanyl/

The Network for Public Health Law

Ideas. Experience. Practical answers.



HARM REDUCTION AND OVERDOSE PREVENTION

Fact Sheet

Evidence for Fentanyl Test Strips

Background

Fentanyl is a synthetic opioid that is 50 to 100 times more potent than morphine.[1] Across the United States, the illicit drug supply has been adulterated by fentanyl and fentanyl-related compounds, leading some people who use drugs ("PWUD") to consume fentanyl unintentionally.[2] As a result, between May 2020 and April 2021, 64% of overdose deaths in the nation involved synthetic opioids, primarily illicitly manufactured fentanyl.[3] A low-cost, high-impact harm reduction strategy for reducing the risk of overdose due to fentanyl contamination comes in the form of fentanyl test strips ("FTS").[4] At the price of approximately one dollar per disposable strip, FTS can detect the presence of fentanyl and many fentanyl analogs in drug samples dissolved in water.[5]

In April 2021, the Centers for Disease Control and Prevention ("CDC") and the Substance Abuse and Mental Health Services Administration ("SAMHSA") announced that, for the first time, federal funding could be used to purchase FTS for overdose response programs.[6] A year later, the White House released a National Drug Control Strategy that called for expanding access to harm reduction interventions—including FTS—in an effort to "meet people where they are and engage them in care and services."[7] This fact sheet briefly discusses the emerging evidence that supports the broad distribution of FTS as one tool to reduce fentanyl-related harm.

Summary of evidence supporting fentanyl test strips

Fentanyl test strips are effective in drug detection

Research confirms that FTS detect the presence of contaminants in drug samples with high accuracy. One study from 2020 that examined the validity of portable drug checking devices found that FTS had a lower limit of detection (0.100 mcg/mL), a lower false positive rate (9.6%), and a lower false negative rate (3.7%) than both a hand-held Raman Spectrometer and a desktop Fourier-Transform Infrared Spectrometer in identifying fentanyl in drugs obtained by law enforcement pursuant to criminal investigations.[8] Fentanyl test strips are also

effective at detecting the presence of certain fentanyl analogs, which are frequently involved in overdose deaths.[9] A 2022 study found that FTS were able to detect 13 of 17 fentanyl analogs tested.[10]

Fentanyl test strips are effective in reducing risky drug use

Fentanyl test strips are distributed to PWUD in community-based and clinical settings nationwide. Across demographics, the vast majority of PWUD surveyed report a keen interest in using FTS.[11] Moreover, numerous studies have found that receiving a positive FTS result leads to behavioral changes among PWUD that mitigate the risk of overdose, including discarding drugs,[12] reducing drug doses,[13] going slower,[14] doing a "tester" shot,[15] using drugs with someone else around,[16] keeping naloxone nearby,[17] and sharing FTS with friends perceived to be at high risk for fentanyl exposure.[18] There is no empirical evidence that use of FTS results in increased drug use among PWUD,[19] and it is unlikely that the availability of drug checking equipment promotes drug initiation.[20]

Fentanyl test strips are associated with reduced overdose risk

Given the nascency of FTS as a harm reduction tool, more time and research are necessary to establish a causal relationship between FTS use and mortality. However, early studies link FTS use with decreased overdose risk. For example, the implementation of a vending machine in Cincinnati that dispensed harm reduction products, including FTS, was associated with a lower countywide incidence of unintentional overdose death.[21] Additionally, at a supervised injection facility in Vancouver that offered FTS to clients, a client's reported intention to reduce their dose after testing their drugs was significantly associated with lower odds of overdose.[22]

Updating state laws to remove barriers to fentanyl test strips

Despite the endorsement of harm reduction advocates, leaders in the federal government, and PWUD themselves, widespread adoption of FTS is often hindered by state laws that criminalize drug paraphernalia. In some jurisdictions, the statutory definition of drug paraphernalia includes objects used for "testing" or "analyzing" controlled substances—provisions which could apply to FTS.[23] Although arrests and prosecutions seldom stem from the use, possession, or distribution of drug checking equipment like FTS, the threat of criminal consequences may produce a chilling effect that deters uptake of FTS initiatives[24] and contributes to low awareness of FTS among PWUD.[25] Encouragingly, over half the states—including ten states between August 2021 and August 2022 alone—have modified their laws to clearly permit the possession and/or distribution of drug checking equipment like FTS.[26]

Conclusion

Fentanyl test strips provide potentially actionable information to PWUD and are associated with reductions in risky drug-use behavior and overdose risk. Modifying or repealing drug paraphernalia laws to clarify that the distribution, possession, and use of FTS is not illegal would likely improve awareness of and access to this critical technology. States that have not already done so should strongly consider modifying their laws and providing funding to ensure that this promising technology is widely available.

Support for the Network for Public Health Law is provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.

This document was developed by Kayla Larkin, MS, and reviewed by Corey Davis, JD, MSPH, at the Network for Public Health Law's Harm Reduction Legal Project (harmreduction@networkforphl.org) in April 2023. **The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

References

[1] *Fentanyl*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/opioids/basics/fentanyl.html (last visited Feb. 24, 2023).
[2] *Id.*
[3] *What Is Fentanyl?*, NATIONAL INSTITUTE ON DRUG ABUSE, https://nida.nih.gov/research-topics/trends-statistics/infographics/what-fentanyl (last visited Feb. 24, 2023).
[4] Corey S. Davis et al., *Legality of Drug Checking Equipment in the United States: A Systematic Legal Analysis*, 234 DRUG & ALCOHOL DEPENDENCE 109425 (2022).
[5] LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION, FENTANYL TEST STRIPS (2021), https://legislativeanalysis.org/wp-content/uploads/2021/05/Fentanyl-Teststrips-FINAL-1.pdf.
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[7] *Fact Sheet: White House Releases 2022 National Drug Control Strategy that Outlines Comprehensive Path Forward to Address Addiction and the Overdose Epidemic*, THE WHITE HOUSE (Apr. 21, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/21/fact-sheet-white-house-releases-2022-national-drug-control-strategy-that-outlines-comprehensive-path-forward-to-address-addiction-and-the-overdose-epidemic/.
[8] Traci C. Green et al., *An Assessment of the Limits of Detection, Sensitivity and Specificity of Three Devices for Public Health-Based Drug Checking of Fentanyl in Street-Acquired Samples*, 77 INT'L J. DRUG POL'Y 102661 (2020).
[9] Ju Nyeong Park et al., *Validation of a Lateral Flow Chromatographic Immunoassay for the Detection of Fentanyl in Drug Samples*, 240 DRUG & ALCOHOL DEPENDENCE 109610 (2022).
[10] *Id.*
[11] *See* C. B. Mistler et al., *Fentanyl Test Strip Use and Overdose History Among Individuals on Medication for Opioid Use Disorder,* 8 AUSTIN J. PUB. HEALTH & EPIDEMIOLOGY 1117 (2021) (85% of participants recruited from an addiction treatment program in New Haven were willing to use FTS); Sean T. Allen et al., *Perspectives on Fentanyl Test Strip Use Among People Who Inject Drugs in Rural Appalachia*, 55 SUBSTANCE USE & MISUSE 1594 (2020) (among a sample of PWUD from two counties in West Virginia, those who reported frequently injecting heroin expressed high willingness to use FTS); Megan K. Reed et al., *"I Probably Got a Minute": Perceptions of Fentanyl Test Strip Use Among People Who Use Stimulants*, 92 INT'L J. DRUG POL'Y 103147 (2021) (among a sample of formerly incarcerated PWUD living with HIV in Philadelphia, 73.3% were interested in using FTS); Aleeya A. Barrolle et al., *A Pilot Study Assessing Client Understanding and Use of Fentanyl Test Strips for Harm Reduction*, 63 J. AM. PHARMACISTS ASS'N 295 (2023) (73% study participants receiving substance use treatment services recruited from a community mental health center in St. Louis indicated that they would like to be able to detect whether there is fentanyl in their drug before use); Sukhpreet Klaire et al., *Take-Home Drug Checking As a Novel Harm Reduction Strategy in British Columbia, Canada,* 106 INT'L J. DRUG POL'Y 103741 (2022) (more than 95% of individuals who participated in a pilot drug checking program in British Columbia stated they would use FTS again); Maxwell S. Krieger et al., *High Willingness to Use Rapid Fentanyl Test Strips Among Young Adults Who Use Drugs*, 15 HARM REDUCTION J. 7 (2018) (among a convenience sample of young adults who use drugs in Rhode Island, 95% reported that they planned to use FTS in the future); Ju Nyeong Park et al., *A Fentanyl Test Strip Intervention to Reduce Overdose Risk Among Female Sex Workers Who Use Drugs in Baltimore: Results from a Pilot Study*, 110 ADDICTIVE BEHAVS. 106529 (2020) (96% of participants, sex workers who use drugs in Baltimore, reported being likely to use FTS in the future); Ju Nyeong Park et al., *Evaluation of Fentanyl Test Strip Distribution in Two Mid-Atlantic Syringe Services Programs*, 94 INT'L J. DRUG POL'Y 103196 (2021) (among a convenience sample of syringe services program clients surveyed in Maryland and Delaware, 49% of respondents in Maryland and 74% in Delaware reported being

interested or very interested in future FTS use); Susan G. Sherman et al., *Acceptability of Implementing Community-based Drug Checking Services for People Who Use Drugs in Three United States Cities: Baltimore, Boston and Providence*, 68 INT'L J. DRUG POL'Y 46 (2019) (of study participants in Baltimore, Boston, and Providence, 88.9% reported interest in taking home FTS for future use).

[12] *See* Jacqueline E. Goldman et al., *Perspectives on Rapid Fentanyl Test Strips As a Harm Reduction Practice Among Young Adults Who Use Drugs: A Qualitative Study*, 16 HARM REDUCTION J. 3 (2019); David Goodman-Meza et al., *Behavior Change After Fentanyl Testing at a Safe Consumption Space for Women in Northern Mexico: A Pilot Study*, INT'L J. DRUG POL'Y 103745 (2022); Mohammad Karamouzian et al., *Evaluation of a Fentanyl Drug Checking Service for Clients of a Supervised Injection Facility, Vancouver, Canada*, 15 HARM REDUCTION J. 46 (2018); Klaire et al., *supra* note 9; Maxwell S. Krieger et al., *Use of Rapid Fentanyl Test Strips Among Young Adults Who Use Drugs*, 61 INT'L J. DRUG POL'Y 52 (2018); Hayoung Oh et al., *Fentanyl Self-Testing in a Community-based Sample of People Who Inject Drugs, San Francisco*, INT'L J. DRUG POL'Y 102787 (2020).

[13] *See* Goldman et al., *supra* note 10; Goodman-Meza et al., *supra* note 10; Karamouzian et al., *supra* note 10; Klaire et al., *supra* note 9; Krieger et al., *supra* note 10; Oh et al., *supra* note 10; Park et al. (2021), *supra* note 9; Park et al. (2020), *supra* note 9; Nicholas C. Peiper et al., *Fentanyl Test Strips As an Opioid Overdose Prevention Strategy: Findings from a Syringe Services Program in the Southeastern United States*, 63 INT'L J. DRUG POL'Y 122 (2019).

[14] *See* Goldman et al., *supra* note 10; Klaire et al., *supra* note 9; Krieger et al., *supra* note 10; Park et al. (2021), *supra* note 9; Peiper et al., *supra* note 11.

[15] *See* Goldman et al., *supra* note 10; Krieger et al., *supra* note 10; Park et al. (2021), *supra* note 9; Park et al. (2020), *supra* note 9; Peiper et al., *supra* note 11.

[16] *See* Goldman et al., *supra* note 10; Klaire et al., *supra* note 9; Krieger et al., *supra* note 10; Park et al. (2021), *supra* note 9; Park et al. (2020), *supra* note 9.

[17] *See* Goldman et al., *supra* note 10.

[18] *Id.*

[19] *See* Felix Betzler et al., *Drug Checking and Its Potential Impact on Substance Use*, 27 EUR. ADDICTION RSCH. 25 (2021).

[20] See Raoul Pieter Joost Koning et al., *Visitors of the Dutch Drug Checking Services: Profile and Drug Use Experience*, 95 INT'L J. DRUG POL'Y 103293 (2021).

[21] Daniel Arendt, *Expanding the Accessibility of Harm Reduction Services in the United States: Measuring the Impact of an Automated Harm Reduction Dispensing Machine*, 63 J. AM. PHARMACISTS ASS'N 309 (2023).

[22] Karamouzian et al., *supra* note 10.

[23] THE NETWORK FOR PUBLIC HEALTH LAW, LEGALITY OF DRUG CHECKING EQUIPMENT IN THE UNITED STATES: AUGUST 2022 UPDATE (2022), https://www.networkforphl.org/wp-content/uploads/2023/01/Legality-of-Drug-Checking-Equipment-in-the-United-States-August-2022-Update.pdf.

[24] *Id.*

[25] *See* Allen et al., *supra* note 9 (among a sample of PWUD from two counties in West Virginia, most were unaware of FTS); Mistler et al., *supra* note 9 (fewer than half of participants recruited from an addiction treatment program in New Haven were aware of FTS prior to the study).

[26] THE NETWORK FOR PUBLIC HEALTH LAW, *supra* note 23.

Matthew Schelzi

From: Amanda Toll <electamandanh@gmail.com>

Sent: Monday, May 1, 2023 6:31 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi
Cc: Jodi Newell
Subject: HB287 Written Testimony

Caution! This message was sent from outside your organization.

Dear Honorable Members of the Senate Judiciary Committee,

I am writing today in support of Rep. Newell's bill HB287, removing testing equipment from the definition of drug paraphernalia in the controlled drug act. It's long past time that, as a society, we move away from viewing addiction as a criminalization issue, and instead view it as a healthcare issue. In line with this, we should allow folks to carry, distribute, and use life-saving tools like this. Criminalization serves to discourage use. While distribution is generally accepted, enforcement tends to be unequal/arbitrary & fall mainly on those actively struggling with substance use disorder.

I hope you pass HB287 and we can move away from criminalization and create increased awareness and public policy that gets at the underlying causes of addiction and addresses it with public policy grounded in empathy and compassion as opposed to punitive measures.

Respectfully,
Amanda Elizabeth Toll
NH State Representative

Matthew Schelzi

From: Ian Freeman <ian@freetalklive.com>
Sent: Monday, May 1, 2023 6:35 PM
Subject: Please OTP HB287 - drug testing equipment saves lives

Caution! This message was sent from outside your organization.

Hello,

I'm writing in support of HB287, which was OTP'd unanimously in its house committee, likely because it's a no-brainer and will help save lives. Drug testing equipment being legal to possess means fewer deaths by people taking drugs that were not as advertised.

As you may already be aware, drugs sold on the black market are highly likely to be debased, cut, poisoned. Being able to test those drugs before they are used is the only way to know of which drugs they are actually comprised.

Currently, setting up a drug testing table at a music festival is a crime in New Hampshire. This bill would make testing drugs legal and will absolutely lead to fewer people dying from overdose.

Thank you for listening,
Ian Freeman
Host, "Free Talk Live"
Minister, Shire Free Church
+1-603-513-2449 office
+1-603-892-3805 cell
+1-815-550-1851 FAX

Free Talk Live: Talk Radio YOU Can Control!
http://freetalklive.com

Matthew Schelzi

From: Katherine Cusack <marygracekatherine@gmail.com>
Sent: Tuesday, May 2, 2023 1:23 PM
To: William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi
Subject: please *support* HB 287

Caution! This message was sent from outside your organization.

Hello,

I'm an NH voter asking that you please support HB 287, which would decriminalize drug testing equipment by removing it from the state's list of banned drug paraphernalia. This will help save lives by allowing people to test the substances they are using.

I ask that you consider public health and safety, and please support HB 287.

Thank you.

Sincerely,
Mary Grace Allen
Dover NH 03820

Matthew Schelzi

From: Kim Hyslop <kim_hyslop@hotmail.com>
Sent: Thursday, May 11, 2023 3:30 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi

Caution! This message was sent from outside your organization.

Hello Senators,

My name is Kimberly Haney and I live in the town of Belmont. I am writing to ask you to support HB 287, which would remove fentanyl and other drug testing equipment from the definition of drug paraphernalia. There's no question that overdose deaths have reached unimaginable levels due to an increase of fentanyl in our state. Fentanyl testing strips are a sensible tool in preventing overdoses and reducing harm, and people should not be penalized for using or possessing them. Thank you for your time and consideration on this issue.

I'd like to share how this has impacted me personally and professionally. I am a counselor working towards the MLADC and LCHMC and have given fentanyl test strips to participants that were aiming to avoid Fentanyl use. My teenage daughter asked if she could have one for a friend that she was concerned about, which I said yes to. The high school found the test strip (and nothing else) on my daughter and she was suspended from school for three days. Because test strips are categorized under drug paraphernalia, the school suspended her using their drug and drug paraphernalia on school property policy. The school also called DCYF and the police department because I gave the strip to my daughter and I still currently have an open DCYF case.

I am the MAT Manager at HealthFirst, an FQHC in Laconia and Franklin, NH. We were giving test strips to our MAT participants to reduce overdose deaths. Since the incident with my daughter, I have ceased handing them out as I do not want my participants going through what we did. If the law changes, we will be suppling them to our participants again.

Harm reduction is rooted in evidence-based practices and incorporates a spectrum of strategies including safer techniques, managed use, and abstinence to promote the dignity and well-being of people who use drugs. In New Hampshire, the Syringe Service Program provides sterile supplies, safe disposal, Narcan, support, and referrals to those in need.

Please consider how supporting HB 287 can positively impact the lives of people that care about people that use drugs.

Thank you,

Kim Haney

Sent from Mail for Windows

Matthew Schelzi

From: bob andelman <bbandelman@yahoo.com>
Sent: Thursday, May 11, 2023 4:48 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi
Cc: kfrey@new-futures.org
Subject: FENTANYL TEST STRIPS

Dear Senators:

I ask you to support HB 287, legalizing fentanyl test strips.

I am a retired anesthesiologist, and have volunteered for over seven years at Families First of Portsmouth in their MAT program. I prescribe Suboxone for men and women with opioid use disorder. Many of my patients who no longer use fentanyl nonetheless may occasionally or frequently use other drugs, such as Adderall, Xanax, Klonopin, or occasionally street drugs such as cocaine or methamphetaamine.

All these drugs are subject to contamination and lacing with fentanyl, due to sophisticated pill presses, and the ubiquity and low cost of fentanyl, which can be manufactured in garage or cellar labs in large quantities. One small lab (generally in Mexico) can produce pounds of fentanyl a week. A fentanyl brick the size of one pound of butter may contain hundreds of thousands of lethal doses of fentanyl, depending on the quality and purity of that brick.

Another risk factor is that these labs produce designer drug cousins of fentanyl by slightly tweaking the original fentanyl molecule. Those designer cousins are totally unstudied, may be more potent than fentanyl, and may be better absorbed orally than fentanyl. If those cousins are laced into counterfeit Percocet, oxycodone, Adderall, Xanax, etc., one pill may be lethal. There are reports now of one counterfeit pill of Percocet or Xanax, laced with fentanyl, killing an unsuspecting adolescent who purchased those pills via social media.

My conclusion is: fentanyl test strips are a tool to test powder or pills, a small portion of which can be dissolved in water and tested for fentanyl with the test strip. This can be as life-saving as Narcan (naloxone.)

Fentanyl test strips should not be considered drug paraphernalia.

Thank you,

Robert Andelman, MD
3 Boyan Place
Portsmouth, NH 03801

Past president and member of the NH Board of Medicine.
Retired anesthesiologist.

Matthew Schelzi

From: Daisy Pierce <daisy@navigatingrecovery.org>
Sent: Monday, May 15, 2023 3:56 PM
Subject: HB 287

Caution! This message was sent from outside your organization.

Dear Senator,

My name is Daisy Pierce, and I live in the town of Gilford. I am writing to ask you to support HB 287, which would remove fentanyl testing equipment from the definition of drug paraphernalia. There's no question that overdose deaths have reached unimaginable levels due to an increase of fentanyl in our state. Fentanyl testing strips are a sensible tool in preventing overdoses and reducing harm, and people should not be penalized for using or possessing them.

Thank you for your time and consideration on this issue.

Sincerely,
Daisy

Daisy M. Pierce, PhD
Executive Director
(pronouns she/her/hers)
---
102 Court Street | Laconia, NH 03246
Office: (603) 524-5940
Cell: (802) 267-4098
www.navigatingrecovery.org
NAVIGATING RECOVERY of THE LAKES REGION

CONFIDENTIALITY NOTICE: This email message, including any attachments, is meant only for the use of the intended recipient(s) and may contain information that is privileged, confidential and exempt from disclosure under state and federal law. If you are not the intended recipient of this message, any dissemination, distribution or copying of this message is strictly prohibited. If you received this message in error, please notify the sender by reply Email and destroy all copies of the original message. 42 C.F.R Part 2 prohibits you from making any further disclosure of information that identifies an individual as having or having had a substance use disorder or of receiving or having received substance use disorder services unless expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 C.F.R Part 2.

Matthew Schelzi

From: Sophia Gawel <Sophia@listencs.org>
Sent: Monday, May 15, 2023 3:58 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi
Subject: Support HB 287

Caution! This message was sent from outside your organization.

Dear Senators,

My name is Sophia Gawel, and I work in social services the town of Lebanon. I am writing to ask you to support HB 287, which would remove fentanyl testing equipment from the definition of drug paraphernalia. There's no question that overdose deaths have reached unimaginable levels due to an increase of fentanyl in our state. Fentanyl testing strips are a sensible tool in preventing overdoses and reducing harm, and people should not be penalized for using or possessing them.

Thank you for your time and consideration on this issue.

Sincerely,

Sophia

Sophia Gawel (She/Her)
LISTEN Community Services – *Service Coordinator*
(603) 448-4553 | Sophia@listencs.org
60 Hanover St | Lebanon, NH 03766-1228

Matthew Schelzi

From: Vicki Hebert <vickiy2y@yahoo.com>
Sent: Monday, May 15, 2023 4:13 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi
Subject: Please Support HB 287

Caution! This message was sent from outside your organization.

Dear Senator,

My name is Vicki Harris, and I live in Rollinsford, NH. I am writing to ask you to **support HB 287**, which would remove fentanyl testing equipment from the definition of drug paraphernalia. There's no question that fentanyl is playing a significant part in overdose deaths which have reached unimaginable levels in our state. Fentanyl testing strips are a common sense tool in preventing overdoses and reducing harm. With a shortage of drug treatment people should not be penalized for using for possessing fentanyl testing equipment.

Thank you for your time and consideration on this issue.

Sincerely,

Vicki

Vicki Harris
Rollinsford, NH
Cell: 603-401-0735

Matthew Schelzi

From: Kate Frey <kfrey@new-futures.org>
Sent: Monday, May 15, 2023 4:50 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi
Subject: HB 287

Caution! This message was sent from outside your organization.

Dear Senator Carson and Honorable Members of the Committee:

New Futures is a nonprofit, nonpartisan organization that advocates, educates, and collaborates to improve the health and wellness of all New Hampshire residents through policy change. In this role, we work extensively with policy makers, stakeholders, and prevention partners to prevent and reduce alcohol and drug problems in our state. New Futures supports HB 287, **as introduced**, because it is an evidence-based harm reduction strategy.

As a response to the state's opioid crisis when drug overdose deaths in New Hampshire peaked at 490 in 2017, New Futures supported harm reduction strategies such as making naloxone more widely available and the Good Samaritan law. Because of these strategies, along with improvements made across the continuum of care for Substance Use Disorders, our state has seen a reduction in overdose deaths from 2018-2021, while other states continued to see increases in drug overdoses.

Drug testing kits, such as fentanyl test strips (FTS) are an additional proven strategy to save lives. According o the Centers for Disease Control, FTS "are a low-cost method of helping prevent drug overdoses and reducing harm". However, drug testing kits like fentanyl testing strips are illegal to possess in New Hampshire despite being a proven harm reduction tool. Fentanyl test strips are small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables). Recent reporting in New Hampshire indicates that fentanyl is routinely mixed with non-opioid drugs. HB 287 would remove fentanyl testing strips and other drug testing kits from the definition of drug paraphernalia and would legalize the use of drug testing equipment.

Please find attached to New Futures testimony a fact sheet from the Public Health Law Network on the evidence for the effectiveness of FTS as a harm reduction tool. We ask that the committee for Ought to Pass **as introduced** on HB 287.

https://www.networkforphl.org/resources/evidence-for-fentanyl-test-strips/

Sincerely,

Kathryn Frey

Kathryn (Kate) Frey
Vice President of Advocacy

Matthew Schelzi

From: Deryn P. Smith <Deryn.P.Smith@hitchcock.org>
Sent: Monday, May 15, 2023 5:18 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi
Subject: Support HB 287!

Caution! This message was sent from outside your organization.

Dear SenatorS,

My name is Deryn , and I live in Manchester. I am writing to ask you to support HB 287, which would remove fentanyl testing equipment from the definition of drug paraphernalia. There's no question that overdose deaths have reached unimaginable levels due to an increase of fentanyl in our state. Fentanyl testing strips are a sensible tool in preventing overdoses and reducing harm, and people should not be penalized for using or possessing them.

Thank you for your time and consideration on this issue.
Sincerely,

Deryn

IMPORTANT NOTICE REGARDING THIS ELECTRONIC MESSAGE:

This message is intended for the use of the person to whom it is addressed and may contain information that is privileged, confidential, and protected from disclosure under applicable law. If you are not the intended recipient, your use of this message for any purpose is strictly prohibited. If you have received this communication in error, please delete the message and notify the sender so that we may correct our records.

Matthew Schelzi

From: Traci Fowler <traci.fowler@gmail.com>
Sent: Monday, May 15, 2023 5:51 PM
To: Sharon Carson; William Gannon; Shannon Chandley; Becky Whitley; Daryl Abbas; Matthew Schelzi

Subject: Fentanyl test strips/HB 287

Caution! This message was sent from outside your organization.

Dear Senator,

My name is Traci, and I live in the Merrimack County town of Andover, NH. I am a mom, and I love someone with a substance use disorder.

I am writing to ask you to support HB 287, which would remove fentanyl testing equipment from the definition of drug paraphernalia. There's **no question** that overdose deaths have reached unimaginable levels due to an increase of fentanyl in our state. Families in every community in NH have been, and continue to be impacted. Fentanyl test strips are a simple, inexpensive and evidence-based method of averting drug overdose. In plain English, these test strips are a critical tool in the fight to save lives. For example, this tool may save the life of a teenager experimenting for the first time, a father in the throes of a severe opioid use disorder, the college student looking for a fun night, or the mother years into recovery and experiencing a relapse.

Fentanyl test strips prevent overdoses and reduce harm, **and people should not be penalized for using or possessing them.**

Thank you for your time and consideration on this important public health issue.

Sincerely,
Traci Fowler

Matthew Schelzi

From: Lauren Chambers <lchambers2818@gmail.com>
Sent: Monday, May 15, 2023 8:34 PM
To: Becky Whitley; Daryl Abbas; Shannon Chandley; Sharon Carson; William Gannon; Matthew Schelzi
Subject: Support HB 287

Caution! This message was sent from outside your organization.

Dear Senators,

My name is Lauren and I live in Franklin. I am writing to ask you to support HB 287, which would remove fentanyl testing equipment from the definition of drug paraphernalia. There's no question that overdose deaths have reached unimaginable levels due to an increase of fentanyl in our state. Fentanyl testing strips are a sensible tool in preventing overdoses and reducing harm, and people should not be penalized for using or possessing them. More and more counterfeit pills are getting into the hands of our youth, and terrifyingly the DEA reports 6/10 pills they seize have fentanyl in them. An accidental overdose or drug poisoning can happen to anyone, so allowing people to easily, safely, and legally check drugs before use can save countless lives.

Thank you for your time and consideration on this issue.
Sincerely,

Lauren Chambers

--
Lauren Chambers, MPH
(603) 848-0084
lchambers2818@gmail.com

Matthew Schelzi

From: Cora Long <coradeelong@gmail.com>
Sent: Tuesday, May 16, 2023 10:07 AM
Subject: HB 287

Caution! This message was sent from outside your organization.

Dear Senator,

My name is Cora Long and I am from the town of Rochester. I am writing to ask you to support HB 287, which would remove fentanyl testing equipment from the definition of drug paraphernalia.

There's no question that overdose deaths have reached unimaginable levels due to an increase of fentanyl in our state. Fentanyl testing strips are a sensible tool in preventing overdoses and reducing harm, and people should not be penalized for using or possessing them.

Preventing overdoses by allowing drug screening tools not only helps preserve life, but can help provide relief for New Hampshire's strained healthcare system.

Thank you for your time and consideration on this issue.
Sincerely,

Cora Long

Sent from Mail for Windows

Matthew Schelzi

From: Lauren McGinley <lauren.mcginley@nhhrc.org>
Sent: Tuesday, May 16, 2023 11:30 AM
To: Sharon Carson; Matthew Schelzi; Ruth Ward; Daryl Abbas; Becky Whitley; Shannon Chandley; William Gannon
Subject: [CAUTION: SUSPECT SENDER] HB 287

Caution! This message was sent from outside your organization.

Hello Chair Carson and members of the Judiciary Committee,

I appreciated the opportunity to speak before your committee about House Bill 287 earlier this month. I wanted to clarify that, as introduced to the Judiciary Committee, the text of HB 287 would not open the door to comprehensive drug checking. The language of the bill would simply allow for more varieties of positive/negative drug checking strips to be utilized as they become ready to use.

Fentanyl test strips are currently the most commonly utilized drug checking strips due to the ubiquity of fentanyl in the drug supply. However, drug checking is a quickly evolving field, and one that responds to need. We don't necessarily know what other contaminants might be identified in the drug supply and what types of strips may be developed to address those contaminants. I would be happy to give examples of new and emerging trends in the drug supply that may result in new test strip capabilities in the near future.

Currently, there are now drug checking strips for Xylazine, the animal tranquilizer which has been increasingly being identified in drug supply nationally and can cause severe wounds and abscesses. However, if HB 287 was amended to only apply to Fentanyl test strips, Xylazine test strips will not be able to reach all of the people that they need to.

There was another bill introduced in the House this session, HB 470, that would have more broadly supported drug checking programs and equipment, but would require affecting many more areas of law that are not discussed in HB 287. This effort was retained in favor of a unanimous committee recommendation for HB 287.

The New Hampshire Harm Reduction Coalition strongly encourages the passage of HB 287 as it is, with no additional amendments, allowing for drug checking strips to be distributed as overdose prevention tools. If anyone has additional questions or would like to have a more in-depth conversation, please feel free to reach out to me.
Thank you,

--
Lauren McGinley
Executive Director | New Hampshire Harm Reduction Coalition
603.568.0258

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Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2023-2024 Session

Bill # HB287-FN

Hearing date: 5/2

Executive Session date: 5/30

Motion of: OTP/A **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	✓		✓	
Sen. Gannon, V-Chair		✓	✓	
Sen. Abbas			✓	
Sen. Whitley			✓	
Sen. Chandley			✓	

Motion of: ~~1710-s~~ CA **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson , Chair			✓	
Sen. Gannon, V-Chair		✓	✓	
Sen. Abbas			✓	
Sen. Whitley	✓		✓	
Sen. Chandley	✓		✓	

Motion of: _____ **Vote:** _____

Committee Member	Made by	Second	Yes	No
Sen. Carson , Chair				
Sen. Gannon, V-Chair				
Sen. Abbas				
Sen. Whitley				
Sen. Chandley				

Reported out by: Sen. Carson

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, May 31, 2023

THE COMMITTEE ON Judiciary

to which was referred **HB 287-FN**

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 2060s

Senator Sharon Carson
For the Committee

Matthew Schelzi 271-3266

JUDICIARY

HB 287-FN, removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

Ought to Pass with Amendment, Vote 5-0.

Senator Sharon Carson for the committee.

Docket of HB287

Docket Abbreviations

Bill Title: (New Title) removing fentanyl and xylazine testing equipment from the definition of drug paraphernalia in the controlled drug act.

Official Docket of **HB287.**:

Date	Body	Description
1/9/2023	H	**Introduced** (in recess of) 01/05/2023 and referred to Criminal Justice and Public Safety **HJ 3** P. 9
1/11/2023	H	Public Hearing: 01/18/2023 12:15 pm LOB 202-204
1/24/2023	H	Executive Session: 02/03/2023 09:00 am LOB 202-204
3/1/2023	H	Full Committee Work Session: 03/10/2023 09:00 am LOB202-204
3/10/2023	H	Executive Session: 03/10/2023 10:00 am LOB 202-204
3/14/2023	H	Committee Report: Ought to Pass 03/10/2023 **(Vote 20-0; CC) HC 16** P. 5
3/22/2023	H	**Ought to Pass**: MA VV 03/22/2023 **HJ 10** P. 7
3/24/2023	S	Introduced 03/23/2023 and Referred to Judiciary; **SJ 12**
4/26/2023	S	**Hearing:** 05/02/2023, Room 100, SH, 01:45 pm; **SC 20**
5/31/2023	S	Committee Report: Ought to Pass with Amendment **#2023-2060s**, 06/01/2023; **SC 24A**
6/1/2023	S	Committee Amendment **#2023-2060s**, AA, VV; 06/01/2023; **SJ 16**
6/1/2023	S	**Ought to Pass with Amendment** 2023-2060s, MA, VV; OT3rdg; 06/01/2023; **SJ 16**
6/15/2023	H	House Concurs with Senate Amendment 2023-2060s (Rep. Roy): MA VV 06/15/2023 **HJ 16** P. 2
7/18/2023	S	Enrolled Adopted, VV, (In recess 06/29/2023); **SJ 20**
7/19/2023	H	Enrolled (in recess of) 06/29/2023 **HJ 17** P. 18
8/9/2023	H	Signed by Governor Sununu 08/04/2023; Chapter 186; eff: 10/03/2023 **HJ 17**

NH House	NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 287 **Senate Committee:** JUD

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

N/A Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

X - amendment # 1710s X - amendment # 2060s

X - amendment # 1828s ___ - amendment # _____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

N/A as amended by the senate ___ as amended by the house

N/A final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Matthew Schelzi 8-31-23

Committee Aide **Date**

Senate Clerk's Office N/A