

# 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.

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**Sponsors:**

Rep. Newell

Rep. Read

Rep. Popovici-Muller

Rep. Wheeler

Rep. Seibert

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**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'Higgins 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.