HB 1792-FN - AS INTRODUCED

2018 SESSION

18-2202
04/01

HOUSE BILL ***1792-FN***

AN ACT reducing the criminal penalty for certain controlled drugs.

SPONSORS: Rep. Dyer, Hills. 37; Rep. E. Edwards, Hills. 11; Rep. Phinney, Straf. 24; Rep. Stallcop, Ches. 4; Rep. Hynes, Hills. 21

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill reduces the criminal penalty for possession, transportation, or use of certain controlled drugs.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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18-2202
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT reducing the criminal penalty for certain controlled drugs.

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

1 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(a)-(b) to read as follows:

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

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

2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, VIII to read as follows:

VIII. Any person who knowingly or purposely obtains or purchases (1) any substance which he represents to be a controlled drug or controlled drug analog, or (2) any preparation containing a substance which he represents to be a controlled drug or controlled drug analog, except as authorized in this chapter, shall be guilty of a ***class B*** misdemeanor. If any person commits such a violation after one or more prior offenses as defined in RSA 318-B:27, such person shall be guilty of a [~~class B felony~~] ***class A misdemeanor***.

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

IX-a. A qualifying patient or designated caregiver as defined in RSA 126-X:1 who sells cannabis to a person who is not a qualifying patient or a designated caregiver shall be guilty of a [~~class B felony and shall be sentenced to a maximum term of imprisonment of not more than 7 years, a fine of not more than $300,000, or both~~] ***class A misdemeanor***.

4 Effective Date. This act shall take effect January 1, 2019.

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18-2202
11/30/17

HB 1792-FN- FISCAL NOTE
AS INTRODUCED

AN ACT reducing the criminal penalty for certain controlled drugs.

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

	Estimated Increase / (Decrease)			
STATE:	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Appropriation	$0	$0	$0	$0
Revenue	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Expenditures	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Funding Source:	[X] General [ ] Education [ ] Highway [X] Other - Fee Revenue			

COUNTY:

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

METHODOLOGY:

This bill reduces penalties that have an impact on the New Hampshire judicial and correctional systems. The following reductions in criminal offense levels are included in this bill:

- Class B felony to class B misdemeanor.
- Class A felony to class A misdemeanor.
- Three year prison sentence to a fine of up to $15,000.
- Unspecified misdemeanor to a class B misdemeanor.
- Class B felony to class A misdemeanor.
- Class B felony and up to 7 years imprisonment, a fine of up to $300,000 or both to a class A misdemeanor.

There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2019	FY 2020
Class B Misdemeanor	$50	$51
Class A Misdemeanor	$72	$73

Routine Criminal Felony Case	$457	$462
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2019 and FY 2020 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	$825/Case	$825/Case
Contract Attorney – Misdemeanor	$300/Case	$300/Case
Assigned Counsel – Felony	$60/Hour up to $4,100	$60/Hour up to $4,100
Assigned Counsel – Misdemeanor	$60/Hour up to $1,400	$60/Hour up to $1,400
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. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2017 Average Cost of Incarcerating an Individual	$36,960	$36,960
FY 2017 Annual Marginal Cost of a General Population Inmate	$4,555	$4,555
FY 2017 Average Cost of Supervising an Individual on Parole/Probation	$557	$557
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	$85 to $110	$85 to $110

The Attorney General's Drug Task Force investigates some of the offenses identified in this bill and would continue to if the bill were to pass. The Department of Justice is generally not involved with prosecution of these offenses which are typically prosecuted by local or county prosecutors. This bill would have no fiscal impact on the Department of Justice since it would not be involved in prosecutions related to this bill and any investigations could be handled within the current budget for the Department.

The Judicial Council indicates this bill could have a significant impact on indigent defense costs. In 2016, the Public Defender Program handled 2,488 straight possession cases. The Council states it is not possible to determine what percentage of these would be charged as class B misdemeanors and not require legal representation.

The Department of Corrections indicates the fiscal impact is indeterminable because the number of individuals who would avoid incarceration under this bill cannot be predicted. Based on information from the Department's Correctional Information System, 2,723 individuals have a sentence under RSA 318-B and are supervised by, or in the custody of, the Department of Corrections. An indeterminate number of these individuals are also be guilty of other felonies.

The New Hampshire Municipal Association indicates this bill would not affect municipal expenditures or revenue.

AGENCIES CONTACTED:

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