

Rep. Cushing, Rock. 21
Rep. Schroadter, Rock. 17
Rep. Kaen, Straf. 5
Rep. Lachance, Hills. 8
Rep. Simmons, Hills. 17
Rep. Hirsch, Merr. 6
Rep. Burt, Hills. 39
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April 26, 2016
2016-1587h
04/10

Amendment to SB 498-FN

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

2
3 1 Statement of Purpose.

4 I. New Hampshire's criminal justice system faces unprecedented challenges associated with
5 the rising rate of opioid and opiate addiction.

6 II. Unlike opioids and opiates, which in 2015 reportedly caused 396 fatal overdose deaths in
7 New Hampshire, marijuana has never been known to cause a fatal overdose. In fact, in August of
8 2015 the Journal of the American Medical Association reported that states that had made
9 marijuana available for patients with severe pain saw a 24.8 percent drop in the rate of opioid
10 deaths. Marijuana can thus be seen as a part of an effective strategy to combat opioid overdoses.

11 III. New Hampshire has maintained criminal penalties against marijuana possession for
12 decades, and yet marijuana remains by far the most commonly used illicit substance in New
13 Hampshire, with more than 11 percent of state residents reporting having used it in the past
14 month, according to survey data from 2014 published by the Substance Abuse and Mental Health
15 Services Administration. The same survey reported that only 3.69 percent of residents had used an
16 illicit drug other than marijuana in the past month.

17 IV. The American Academy of Pediatrics endorsed decriminalization of marijuana in 2015,
18 noting that reducing possession penalties to a violation has "not led to an increase in youth use
19 rates" in states where it has been enacted.

20 V. Reducing the penalty for possessing 1/4 ounce or less of marijuana to a violation for first
21 offenses and allowing offenders to pay fines by mail will result in less time and resources being
22 spent on such cases, allowing police and courts to spend more time and resources dealing with
23 serious crimes.

24 VI. A criminal penalty accompanying a conviction for possession of one-quarter ounce or
25 less of marijuana can lead to a lifetime of harsh consequences. These may include denial of student
26 financial aid, housing, employment, and professional licenses. Reducing this penalty to a violation
27 for first offenses will significantly reduce the number of New Hampshire residents who receive
28 criminal records for possessing one-quarter ounce or less of marijuana.

29 2 New Sections; Controlled Drug Act; Personal Possession of Marijuana. Amend RSA 318-B by

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1 inserting after section 2-b the following new sections:

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

3 I. Except as provided in RSA 126-X, no person shall possess 1/4 ounce or less of marijuana,
4 including adulterants or dilutants.

5 II. Except as provided in RSA 126-X, no person shall possess one gram or less of hashish,
6 including adulterants or dilutants.

7 III.(a) Any person 18 years of age or older who violates the provisions of paragraph I or II
8 shall be subject to a fine of \$300.

9 (b) Any person 18 years of age or older who violates the provisions of paragraph I or II
10 and has one prior conviction for violating paragraph I or II in the preceding 3 years shall be guilty
11 of a misdemeanor. Notwithstanding any provision of law to the contrary, any complaint alleging a
12 second offense under paragraph I or II occurring within 3 years of a prior offense may be reduced to
13 a violation at any time prior to trial. In addition to any other penalty authorized by law, any person
14 sentenced under this subparagraph shall be ordered to pay a fine in the amount of not more than
15 \$500.

16 (c) Any person 18 years of age or older who violates the provisions of paragraph I or II
17 and has 2 or more prior convictions for violating paragraph I or II in the preceding 3 years shall be
18 guilty of a misdemeanor. In addition to any other penalty authorized by law, any person sentenced
19 under this subparagraph shall be ordered to pay a fine in the amount of not more than \$500.

20 (d) Any person under 18 years of age possessing 1/4 ounce or less of marijuana,
21 including adulterants and dilutants, or one gram or less of hashish, including adulterants or
22 dilutants, may be subject to a petition under RSA 169-B or 169-D. In addition to any requirements
23 imposed as a result of a petition under RSA 169-B or 169-D, the court may order the offender to
24 participate in up to 35 hours of community service, which shall be completed within one year of the
25 date of the offense. Further, the court may order the offender to complete an alcohol and substance
26 abuse education program that has been approved by the department of health and human services,
27 at the offender's expense, within one year of the date of the offense. The offender shall furnish the
28 court with evidence of completion of both an approved alcohol and substance abuse education
29 program and community service. An offender who fails to complete an alcohol and substance abuse
30 education program or community service requirement as ordered may be subject to an additional
31 fine of up to \$350. In all cases under this subparagraph, the offender's parent or legal guardian
32 shall be notified of all proceedings.

33 (e) Any person who is not yet 21 years of age on the date of the incident, who is
34 convicted of a violation under paragraph I or II may, at the discretion of the court, be subject to the
35 revocation or denial of a driver's license or privilege to drive for not more than 30 days on the first
36 finding or conviction under this paragraph, and not more than one year for a subsequent finding or
37 conviction. Nothing in this paragraph shall prevent the court from requiring any person subject to

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

11 (f) The director shall, when ordered by the court, revoke the driver's license or privilege
12 to drive or deny an application for a license for not more than 30 days on the first finding or
13 conviction under paragraph I or II, and not more than one year for a subsequent finding or
14 conviction; provided, however, that the director shall not revoke or deny a license or privilege to
15 drive under this paragraph without first giving the person an opportunity for a hearing to
16 determine that the person is the individual who was convicted of the offense and against whom the
17 court order applies. In the case of denial of an application for a license, the period imposed shall
18 begin on the date the person is eligible by age for the issuance of a license. This section shall only
19 apply to a person who is not yet 21 years of age.

20 IV.(a) Except as provided in this section, no person shall be subject to arrest for a violation
21 of paragraph I or II. A person who commits a violation under paragraph I or II shall be released on
22 a hand summons, provided the law enforcement officer does not have lawful grounds for arrest for a
23 different offense. If a person has a previous conviction for a violation of paragraph I or II within the
24 preceding 3 years, a law enforcement officer may issue a summons for the offense which informs the
25 person that they must appear in court for arraignment on the date marked on the summons.

26 (b) Any person found with a violation level amount of marijuana or hashish who refuses
27 to provide their correct full name and address shall be subject to arrest rather than issuance of a
28 summons to ensure appearance at court.

29 (c) Except as specifically provided in this section, neither the state nor any of its
30 political subdivisions shall impose any form of penalty on a person for possessing 1/4 ounce or less of
31 marijuana, or one gram or less of hashish, or paraphernalia for marijuana use.

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

34 (e) This paragraph shall not be construed to prohibit a law enforcement officer from
35 taking a person into protective custody pursuant to RSA 172:15.

36 V. One-half of the amount of all fines collected under this section shall be deposited in the
37 alcohol abuse prevention and treatment fund established in RSA 176-A:1 to be used for alcohol and

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1 other drug abuse prevention, treatment, and recovery, including the development of a marijuana
2 education program pursuant to RSA 12-J:3, III-b, and one-half of the amount of such fines shall be
3 used to fund the continued operation of the judicial branch.

4 318-B:2-d Plea by Mail.

5 I. Any person 18 years of age or older who is charged with a violation of RSA 318-B:2-c, I or
6 II may enter a plea of guilty, nolo contendere, or not guilty, by mail in a circuit court, district
7 division, unless such person has received a summons that indicates that he or she must appear in
8 person for arraignment pursuant to the provisions of RSA 318-B:2-c, IV(a).

9 II. Any defendant not subject to a must appear summons based upon a prior conviction
10 shall receive, in addition to a summons, a fine notice entitled "Notice of Fine" which shall contain
11 the amount of the fine for a violation of RSA 318-B:2-c, I or II. A defendant who is issued a
12 summons and notice of fine and who wishes to plead guilty or nolo contendere shall enter his or her
13 plea on the summons and return it with payment of the fine within 30 days of the date of the
14 summons. Payment by credit card may be accepted in lieu of cash payment.

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

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

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

23 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II to read as follows:

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

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

34 (b) In the case of a controlled drug or its analog classified in schedule V, the person
35 shall be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more
36 than \$15,000, or both. If a person commits any such violation after one or more prior offenses as
37 defined in RSA 318-B:27, such person shall be guilty of a class B felony, except that

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1 notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be
2 imposed[;].

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

6 (d) In the case of **more than 1/4 ounce of** marijuana, including any adulterants or
7 dilutants, or ~~[5 grams or less]~~ **more than one gram** of hashish, the person shall be guilty of a class
8 A misdemeanor.

9 4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, III(a) to read as follows:

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

12 5 Other Alcohol or Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as
13 follows:

14 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while
15 knowingly having in his or her possession or in any part of the vehicle a controlled drug or
16 controlled drug analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor,
17 and his or her license shall be revoked or his or her right to drive denied for a period of 60 days and
18 at the discretion of the court for a period not to exceed 2 years. ***This section shall not apply to***
19 ***the possession of marijuana or hashish as provided in RSA 318-B:2-c.***

20 6 New Paragraph; Governor's Commission on Alcohol and Drug Abuse Prevention, Treatment,
21 and Recovery; Duties. Amend RSA 12-J:3 by inserting after paragraph III-a the following new
22 paragraph:

23 III-b. Develop a marijuana education program.

24 7 Effective Date. This act shall take effect upon its passage.

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AMENDED ANALYSIS

This bill reduces the penalty for possession of 1/4 ounce or less of marijuana or one gram or less of hashish to a violation. The bill also requires the governor's commission on alcohol and drug abuse prevention, treatment, and recovery to develop a marijuana education program.