

HB 226-FN - AS AMENDED BY THE HOUSE

26Mar2025... 0624h

2025 SESSION

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HOUSE BILL

226-FN

AN ACT relative to the use of drug checking equipment.

SPONSORS: Rep. Newell, Ches. 4; Rep. Meuse, Rock. 37; Rep. Proulx, Hills. 15; Rep. Read, Rock. 10; Rep. Seibert, Hills. 21; Rep. Tom Mannion, Hills. 1; Sen. Watters, Dist 4

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill amends and adds definitions to the Controlled Drug Act to exclude drug checking equipment from being considered drug paraphernalia and authorizes the use of drug checking equipment.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to the use of drug checking equipment.

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

1 1 Findings. The general court hereby finds that:

2 I. Drug overdoses, both fatal and non-fatal, remain a profoundly serious problem in the
3 United States and New Hampshire. More than 107,000 individuals in the United States died of a
4 drug overdose during 2023. While 2023 saw the first decrease in overdose deaths since 2018, it still
5 represents a 40 percent increase in overdose deaths during those 5 years. Findings from the
6 committee to study harm reduction and overdose prevention programs (SB 279, Chapter Law 90:2,
7 Laws of 2022) found, “overdose deaths continue to present an urgent public health crisis in New
8 Hampshire and across the nation.” Additionally, fatal drug overdoses are increasing at a faster rate
9 in New Hampshire than the rest of the country; while the United States saw about a one percent
10 increase in number of drug overdose deaths from 2021 to 2022, New Hampshire saw a 10 percent
11 increase in drug overdose deaths during that time.

12 II. An increasing percentage of United States drug overdose deaths involve synthetic
13 opioids, particularly illicitly manufactured fentanyl and fentanyl analogs, and stimulants with abuse
14 potential, such as methamphetamine.

15 III. In New Hampshire in 2023, 94 percent of the 385 opioid related overdose deaths
16 involved the use of fentanyl and 28 percent of the total overdose deaths involved stimulants.

17 IV. There are several reasons for the increase in opioid- and stimulant-involved fatal
18 overdoses. Synthetic opioids are highly potent and increasingly available within the United States.
19 These drugs are found in the supplies of other drugs, including as pills pressed to look like legitimate
20 pharmaceuticals or in other drugs that a user has no reason to believe contain opioids. Additionally,
21 there is increased potency, availability, and affordability of opioids and stimulants in recent years.

22 V. Several factors play a role in whether ingesting a substance will lead to an overdose,
23 including the type of drugs present in the substance ingested, the dosage or concentration of the
24 drug present, and whether the substance contains unexpected drugs or adulterants in addition to, or
25 in lieu of, the intended drug.

26 VI. An individual may be able to ingest drugs more safely, and with less risk of overdose, by
27 using drug checking equipment to gather information about the factors identified in paragraph V.

28 VII. Studies show that drug checking may favorably influence an individual’s intended and
29 actual drug use behaviors, in the form of ingesting a smaller amount of drug or using it more slowly,
30 keeping naloxone nearby, changing the method of administration, using with someone else, or not
31 using the drug at all at that time. Despite the 2023 legalization of fentanyl test strips and xylazine

test strips, a more inclusive and more precise definition of drug checking equipment is needed to help reduce overdoses and other severe health impacts caused by new substances, contaminants, and adulterants that are entering the marketplace.

2 Controlled Drug Act; Definitions. Amend the introductory paragraph of 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~~ **"Drug paraphernalia"** includes, but is not limited to:

3 Controlled Drug Act; Definitions. Amend RSA 318-B:1, X-a(d) to read as follows:

(d) Testing equipment used or intended for use ~~[or customarily intended for use in identifying, or analyzing]~~ **in the manufacturing, compounding, converting, processing, or preparing of controlled substances for illegal sales or distribution in order to identify or analyze** the strength, effectiveness, or purity of controlled substances.

4 Controlled Drug Act; Definitions. Amend RSA 318-B:1, X-b to read as follows:

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, **"drug paraphernalia" shall not include:**

(a) **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.**

(b) **Other drug checking equipment used to inform individuals of whether a substance has been adulterated by the presence of a synthetic opioid, another controlled substance, or undisclosed chemical compound or contaminant.**

(c) **Materials used by agents of organizations that provide harm reduction services authorized by the state, a county, a municipality, or a public health department, in the processing, preparing, packaging, repackaging, storing, or containing of a nominal amount of a controlled substance for the purpose of confirmatory testing.**

(d) **Drug checking equipment used, purchased, transported, or distributed by agents of organizations that provide harm reduction services authorized by the state, a county, a municipality, or a public health department.**

5 New Paragraphs; Controlled Drug Act; Definitions. Amend RSA 318-B:1 by inserting after paragraph X-b the following new paragraphs:

X-c. "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.

X-d. "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, xylazine 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.

X-e. "Drug checking packaging" means the materials or items used by agents of organization that provide harm reduction services to safely store, contain, cover, or transport small amounts of one or more controlled substances or controlled substance analogs. "Drug checking packaging" includes, but is not limited to, plastic bags, plastic vials, glass vials, and wax paper bindles. "Drug checking packaging" in this section refers to the packaging materials provided for or utilized in drug checking.

X-f. "Eligible activities" means purchasing, obtaining, providing, transporting, distributing, using, or evaluating the use of drug checking equipment by organizations that provide harm reduction services.

X-g. "Harm reduction" means a program, service, support, or resource that attempts to reduce the adverse consequences of substance use among people who use substances. "Harm reduction" addresses conditions that give rise to substance use, as well as the substance use itself, and may include, but is not limited to, drug checking, naloxone distribution, and education about good Samaritan laws.

6 Controlled Drug Act; Acts Prohibited. Amend RSA 318-B:2, II to read as follows:

II. It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used or is customarily intended to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled substance. ***As used in this paragraph, "drug paraphernalia" shall not include drug checking equipment or materials used in the processing, preparing, packaging, repackaging, or storing for the purpose of drug checking, as defined in RSA 318-B:1, X-c, conducted by harm reduction programs registered with the New Hampshire department of health and human services.***

1 7 New Section; Controlled Drug Act; Use of Drug Checking Equipment Permitted. Amend RSA
2 318-B by inserting after section 2-e the following new section:

3 318-B:2-f Use of Drug Checking Equipment Permitted.

4 I. A person may:

5 (a) Obtain, possess, purchase, sell, provide, transport, distribute, use, or request another
6 person to use drug checking equipment;

7 (b) Possess, transport, deliver, or provide drug paraphernalia for, or during, analysis by
8 drug checking equipment; or

9 (c) Possess, provide, or communicate the results of the drug checking analysis in paper,
10 electronic, or verbal form.

11 II. The state may authorize use of state or state-administered funds including, but not
12 limited to, funds in the New Hampshire opioid litigation settlement proceeds fund for eligible drug
13 checking activities.

14 III. No person shall prohibit another person from using federal funds for eligible drug
15 checking activities, provided the use of the federal funds is consistent with federal law and any rules
16 governing use of the funds.

17 IV. No person shall be arrested, charged, prosecuted, subject to revocation of probation,
18 parole, or pre-trial release; subject to civil, disciplinary, or administrative action; subject to the loss
19 of one or more dependents; subject to the loss of housing; or result in any other punitive action or
20 penalty taken against the person for engaging in any act authorized under this section. The fact
21 that a person engages in any act authorized under this section shall also not:

22 (a) Serve as the basis, in whole or in part, for a determination by a law enforcement
23 officer or any court of probable cause or reasonable suspicion to stop, search, seize, or arrest the
24 person or the person's property.

25 (b) Be admissible as evidence in a criminal case or administrative action against the
26 person.

27 V. The results from a drug checking analysis shall not be used by any person for a treatment
28 or other clinical decision, in any criminal investigation, or as evidence in a criminal case or
29 administrative action.

30 8 Effective Date. This act shall take effect January 1, 2026.

**HB 226-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2025-0624h)**

AN ACT relative to the use of drug checking equipment.

FISCAL IMPACT:

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	\$0	\$0	\$0
Revenue Fund	None			
Expenditures*	\$0	Indeterminable Decrease		
Funding Source	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
Funding Source	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

Estimated Political Subdivision Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable Decrease		
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable Decrease		

METHODOLOGY:

This bill amends the definition of drug paraphernalia to exclude certain drug checking equipment, and authorizes the use of said equipment. Currently, RSA 318-B:26, III(c) makes it a misdemeanor to deliver, manufacture with the intent to deliver, or possess with the intent to deliver drug paraphernalia. By excluding drug checking equipment used for the specified legal purposes, from the definition of paraphernalia, the bill may result in some indeterminable reduction in criminal prosecutions. Therefore, this bill may have an impact on the judicial and correctional systems, which could affect prosecution, incarceration, probation, and parole costs, for the state, as well as county and local governments. A summary of such costs can be found at: https://gencourt.state.nh.us/lba/Budget/Fiscal_Notes/JudicialCorrectionalCosts.pdf

AGENCIES CONTACTED:

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