

SB 467-FN - AS INTRODUCED

2026 SESSION

26-2028

09/08

SENATE BILL

467-FN

AN ACT

relative to the penalty for certain fentanyl-related offenses and establishing a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting.

SPONSORS:

Sen. Gannon, Dist 23; Sen. Innis, Dist 7; Sen. Birdsell, Dist 19; Sen. Lang, Dist 2; Sen. Avar, Dist 12; Sen. Pearl, Dist 17; Sen. Rochefort, Dist 1; Sen. Abbas, Dist 22; Rep. M. Pearson, Rock. 34; Rep. Khan, Rock. 30; Rep. Litchfield, Rock. 32; Rep. L. Walsh, Rock. 15; Rep. Kuttap, Rock. 17

COMMITTEE:

Judiciary

ANALYSIS

This bill:

I. Adds mandatory minimum sentences for certain fentanyl-related offenses.

II. Sets a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struck through]~~.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the penalty for certain fentanyl-related offenses and establishing a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting.

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

1 1 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(a)(3) to read as follows:

2 (3) Heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of 5
3 grams or more, including any adulterants or dilutants. ***A fentanyl class drug in a quantity of 20***
4 ***grams or more, including any adulterants or dilutants, shall carry a minimum term of***
5 ***imprisonment of not less than 3 years and 6 months incarceration. A fentanyl class drug***
6 ***in a quantity of 50 grams or more, including any adulterants or dilutants, shall carry a***
7 ***minimum term of imprisonment of not less than 7 years incarceration, subject to the***
8 ***exception delineated herein.***

9 (A) A person subject to a mandatory minimum sentence prescribed in
10 subparagraph (3) may be eligible for a sentence below the mandatory minimum if the court
11 finds, by clear and convincing evidence, that all of the following conditions are met:

12 (i) The defendant has no prior convictions for violent felonies, as
13 defined in RSA 651:5, XIII, or substantially similar convictions in any other territory, state,
14 or federal jurisdiction, within the past 7 years.

15 (ii) The offense did not involve the use, attempted use, or credible
16 threat of violence, firearms, or other dangerous weapons, as defined in RSA 625:11, V.

17 (iii) The defendant was not a leader, organizer, or supervisor in the
18 drug operation, as determined by the court.

19 (iv) The defendant, to the extent that he or she is able, as determined
20 by the court, and considering the recommendation of the prosecutor, provides substantial
21 assistance to law enforcement, including full and truthful disclosure of all known details
22 of the offense and related nonviolent activities, resulting in actionable intelligence related
23 to another offender, prior to sentencing. The court shall make the final decision related to
24 the satisfaction of this condition.

25 (v) The defendant submits to a court-ordered substance use disorder
26 evaluation and, if recommended, completes a state-approved treatment program within 9
27 months of sentencing, provided such treatment is available. In the event no treatment is
28 available within the 9-month window, the court may, at its discretion, extend the time to
29 complete such treatment. If no treatment is recommended, the defendant shall complete a

1 *50-hour, court-approved drug education program, provided such a program is available.*
2 *The court may, at its discretion, allow substitution programs of a similar nature if there*
3 *are no 50-hour, approved programs available.*

4 *(vi) The defendant did not knowingly possess or distribute a fentanyl-*
5 *class drug in a form intended to deceive, including but not limited to counterfeit*
6 *prescription pills.*

7 *(B) Upon determining eligibility, the court may impose a sentence below*
8 *the mandatory minimum, including probation, conditional discharge, or a reduced prison*
9 *term, pursuant to RSA 651:2. The court shall consider:*

10 *(i) The defendant's specific role and culpability in the offense.*

11 *(ii) Mitigating factors, such as documented coercion or extreme*
12 *economic hardship, provided they do not excuse the offense.*

13 *(iii) The defendant's risk of recidivism, based on criminal history and*
14 *compliance with pre-sentencing conditions.*

15 *(C) If a sentence below the mandatory minimum is applied pursuant to*
16 *subparagraph (B), the court shall impose a minimum of 3 years' probation with mandatory*
17 *conditions, including:*

18 *(i) Biweekly drug testing, if applicable.*

19 *(ii) Completion of any court-ordered treatment or education program.*

20 *(iii) At least 250 hours of community service, unless waived due to*
21 *documented medical inability.*

22 *(iv) A suspended sentence of at least 3 years and 6 months*
23 *imprisonment, to be imposed if probation conditions are violated.*

24 *(D) For the purpose of determining the quantity of the fentanyl-class*
25 *drug under RSA 318-B:26, I(a)(3), individual acts of manufacturing, selling, prescribing,*
26 *administering, or transporting or possessing with intent to sell, dispense, or compound*
27 *may be aggregated if each of the acts occurred within a 90-day period.*

28 2 Controlled Drug Act; Penalties. Amend the introductory paragraph of RSA 318-B:26, IX to
29 read as follows:

30 IX. Any person who manufactures, sells, or dispenses methamphetamine, lysergic acid[₇]
31 diethylamide (**LSD**), phencyclidine (PCP) or any other controlled drug classified in schedules I or II,
32 or any controlled drug analog thereof, in violation of RSA 318-B:2, I or I-a, **excluding any fentanyl**
33 **class drug, including any adulterants or dilutants**, is strictly liable for a death which results
34 from the injection, inhalation, or ingestion of that substance, and may be sentenced to imprisonment
35 for life or for such term as the court may order. **Any person who manufactures, sells, or**
36 **dispenses a fentanyl class drug, including any adulterants or dilutants, in violation of**
37 **RSA 318-B:2, I or I-a, is strictly liable for a death which results from the injection,**

inhalation, or ingestion of that substance and may be sentenced to imprisonment for life or for such term as the court may order. Any such term shall not be less than 7 years of imprisonment, subject to the exception delineated in paragraph IX-b. For purposes of this section, the person's act of manufacturing, dispensing, or selling a substance is the cause of a death when:

3 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after paragraph IX-b the following new paragraph:

IX-c.(a) A defendant subject to the mandatory minimum sentence in paragraph IX may be eligible for a sentence below the mandatory minimum if the court finds, by clear and convincing evidence, that all of the following conditions are met:

(1) The defendant has no prior convictions for violent felonies, as defined in RSA 651:5, XIII, or any drug-related offenses under RSA 318-B within the past 10 years.

(2) The offense did not involve the use, attempted use, or credible threat of violence, firearms, or other dangerous weapons, as defined in RSA 625:11, V.

(3) The defendant was not a leader, organizer, or supervisor in the drug operation, as determined by the court.

(4) The defendant, to the extent that he or she is able, as determined by the court, and considering the recommendation of the prosecutor, provides substantial assistance to law enforcement, including full and truthful disclosure of all known details of the offense and related nonviolent activities, resulting in actionable intelligence related to another offender, prior to sentencing. The court shall make the final decision related to the satisfaction of this condition.

(5) The defendant submits to a court-ordered substance use disorder evaluation and, if recommended, completes a state-approved treatment program within 9 months of sentencing, provided such treatment is available. In the event no treatment is available within the 9-month window, the court may at its discretion extend the time to complete such treatment. If no treatment is recommended, the defendant shall complete a 50-hour, court-approved drug education program, provided such a program is available. The court may, at its discretion, allow substitution programs of a similar nature if there are no 50-hour, approved programs available.

(6) The defendant did not knowingly distribute a fentanyl-class drug in a form intended to deceive, including but not limited to counterfeit prescription pills.

(b) Upon determining eligibility, the court may impose a sentence below the mandatory minimum, including probation, conditional discharge, or a reduced prison term, pursuant to RSA 651:2. The court shall consider:

(1) The defendant's specific role and culpability in the offense.

(2) Mitigating factors, such as documented coercion or extreme economic hardship, provided they do not excuse the offense.

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1 (3) The defendant's risk of recidivism, based on criminal history and compliance with
2 pre-sentencing conditions.

3 (c) If a sentence below the mandatory minimum is applied pursuant to this paragraph,
4 the court shall impose a minimum of 3 years' probation with mandatory conditions, including:

5 (1) Biweekly drug testing, if applicable.

6 (2) Completion of any court-ordered treatment or education program.

7 (3) At least 300 hours of community service, unless waived due to documented
8 medical inability.

9 (4) A suspended sentence of at least 5 years' imprisonment, to be imposed if
10 probation conditions are violated.

11 4 Effective Date. This act shall take effect January 1, 2027.

**SB 467-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the penalty for certain fentanyl-related offenses and establishing a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting.

FISCAL IMPACT:

Estimated State Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund</i>	None			
Expenditures*	Indeterminable			
<i>Funding Source</i>	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source</i>	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

Estimated Political Subdivision Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	Indeterminable			
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	Indeterminable			

METHODOLOGY:

This bill adds, deletes, or modifies a criminal penalty, or changes statute to which there is a penalty for violation. 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