

HB 196-FN - AS INTRODUCED

2025 SESSION

25-0169

09/05

HOUSE BILL

196-FN

AN ACT relative to annulling, resentencing, or discontinuing prosecution of certain cannabis offenses.

SPONSORS: Rep. Wheeler, Hills. 33; Rep. H. Howard, Straf. 4; Rep. W. Thomas, Hills. 12; Rep. Tom Mannion, Hills. 1; Rep. Read, Rock. 10

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

 This bill allows for additional annulments, resentencings, or discontinuations of prosecutions for certain cannabis offenses.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 annulling, resentencing, or discontinuing prosecution of certain cannabis offenses.

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

1 1 Criminal Code; Sentences; General Provisions; Annulment of Arrests and Convictions for
2 Marijuana Possession. Amend RSA 651:5-b to read as follows:

3 651:5-b Annulment of Arrests and Convictions for Marijuana Possession.

4 ***I. In this section:***

5 (a) ***“Cannabis” means “marijuana” as defined in RSA 318-B:2-c.***

6 (b) ***“Possession limit” means whichever of the following quantities is greater:***

7 (1) ***Two ounces of cannabis and 5 grams of hashish, or***

8 (2) ***An amount of cannabis that is legal under New Hampshire law for***
9 ***adults 21 and older to possess.***

10 (c) ***“Cannabis-related offense” means any of the following:***

11 (1) ***Any offense under RSA 318-B involving cannabis or paraphernalia***
12 ***intended for cannabis; and***

13 (2) ***Any other offense that would not have been an offense were it not for the***
14 ***illegality of cannabis.***

15 ***II.*** Any person who was arrested or convicted for knowingly or purposely obtaining,
16 purchasing, transporting, or possessing, actually or constructively, or having under his or her
17 control, [~~3/4 of an ounce~~] ***no more than the possession limit*** of marijuana [~~or less~~] where the
18 offense occurred before [~~September 16, 2017~~] ***July 1, 2025*** may, at any time, petition the court in
19 which the person was convicted or arrested to annul the arrest record, court record, or both. The
20 petition shall state that the amount of marijuana was [~~3/4 of an ounce or less~~] ***no more than the***
21 ***possession limit.*** The petitioner shall furnish a copy of the petition to the office of the prosecutor of
22 the underlying offense. The prosecutor may object within 10 days of receiving a copy of the petition
23 and request a hearing. If the prosecutor does not object within 10 days, the court shall grant the
24 petition for annulment. If the prosecutor timely objects, the court shall hold a hearing. In a hearing
25 on the petition for annulment, the prosecutor shall be required to prove beyond a reasonable doubt
26 that the petitioner knowingly or purposely obtained, purchased, transported, or possessed, actually
27 or constructively, or had under his or her control, marijuana in an amount exceeding [~~3/4 of an~~
28 ~~ounce~~] ***the possession limit.*** At the close of the hearing, the court shall grant the petition unless
29 the prosecutor has proven that the amount of marijuana exceeded [~~3/4 of an ounce~~] ***the possession***

limit. If the petition is granted, and an order of annulment is entered, the provisions of RSA 651:5, X-XI shall apply to the petitioner.

III.(a) Any person who was arrested or convicted for any cannabis-related offense may, at any time, petition the court in which the person was convicted or arrested to annul the arrest record, court record, or both, when the petitioner has completed the sentence. The petition shall state that the arrest or conviction was for a cannabis-related offense.

(b) The court shall furnish a copy of the petition to the office of the prosecutor of the underlying offense. The prosecutor may object within 14 days of receiving a copy of the petition and request a hearing. If the prosecutor does not object within 14 days, the court shall grant the petition for annulment.

(c) If the prosecutor timely objects, the court shall hold a hearing. In a hearing on the petition for annulment, the prosecutor shall be required to prove by clear and convincing evidence that:

(1) The offense is not eligible for annulment under this section because it was not a cannabis-related offense;

(2) The offense is not eligible for annulment under this section because the petitioner has not completed the sentence; or

(3) Annulment would not be in the interests of justice.

(d) The court shall grant the petition unless the prosecutor has proven that:

(1) The offense is not eligible for annulment under this section because it was not a cannabis-related offense;

(2) The offense is not eligible for annulment under this section because the petitioner has not completed the sentence; or

(3) Annulment would not be in the interests of justice.

(e) There shall be a presumption that granting the petition would be in the interests of justice due to the decriminalization or legalization of cannabis for adults and the unequal enforcement of cannabis laws. The presumption may be overcome by evidence that the annulment would not be in the interests of justice, including in instances where the offense was recent and involved:

(1) An adult distributing cannabis to a minor or using a minor to sell cannabis; or

(2) A conviction under RSA 318-B:2-e for negligently storing marijuana-infused products, causing a minor to access them.

IV. If the petition is granted, and an order of annulment is entered, the provisions of RSA 651:5, X-XI shall apply to the petitioner.

V. All fees shall be waived.

2 New Sections; Criminal Code; Sentences; General Provisions; Cannabis Convictions and Sentences. Amend RSA 651 by inserting after section 5-b the following new sections:

651:5-c Annulment of Certain Arrests and Convictions for Cannabis.

I. All convictions and arrests for misdemeanor or violation level offenses for possession of cannabis shall be automatically annulled. Within 6 months of the effective date of this section, the department of safety shall remove any such qualified convictions from its records and notify the court from which the case originated, which shall place an order of annulment in the court file and thereafter process the file in the same manner as any other annulled case. Any person who believes that he or she is eligible for automatic annulment may request that the department of safety examine his or her conviction to determine whether it should be annulled. Should the department of safety fail to annul a qualified conviction, any person so aggrieved may petition the court without fee for further review of eligibility.

II. Eligible annulments of convictions and civil adjudications pursuant to this section shall be granted notwithstanding the existence of outstanding court-imposed or court-related fees, fines, costs, assessments, or charges.

651:5-d Re-Sentencing for Cannabis Sentences.

I. As used in this section:

(a) "Cannabis" means "marijuana" as defined in RSA 318-B:2-c.

(b) "Cannabis-related offense" means any of the following:

(1) Any offense under RSA 318-B involving cannabis or paraphernalia intended for cannabis; and

(2) Any other offense that would not have been an offense were it not for the illegality of cannabis.

II.(a) No later than 90 days after the effective date of this section, the department of corrections and the superintendent of each county house of correction shall conduct a search to determine all individuals serving a period of incarceration or supervision for a violation of RSA 318-B involving cannabis or paraphernalia intended for cannabis, or any other cannabis-related offense and notify the court in which each person was convicted and the judicial branch, administrative office of the courts.

(b) Any person who was convicted of any cannabis-related offense who has not completed the sentence may, at any time, petition the court in which the person was convicted for re-sentencing.

(c) The court in which the person was convicted shall furnish a copy of the petition to the office of the prosecutor of the underlying offense. The prosecutor may object within 14 days of receiving a copy of the petition and request a hearing. If the prosecutor does not object within 14 days, the court shall grant the petition and re-sentence the person to the portion of the sentence the individual has already completed.

1 (d) If the prosecutor timely objects, the court shall hold a hearing. In a hearing on the
2 petition for re-sentencing, the prosecutor shall be required to prove by clear and convincing evidence
3 that:

4 (1) The offense is not eligible for re-sentencing under this section because it was not
5 a cannabis-related offense;

6 (2) Re-sentencing would not be in the interests of justice; or

7 (3) Re-sentencing would be in the interests of justice, but that the appropriate
8 sentence is something other than the portion of the sentence the individual has already completed.

9 (e) The court shall grant the petition and re-sentence the individual to any sentence he
10 or she has already completed unless the prosecutor has proven that:

11 (1) The offense is not eligible for re-sentencing under this section because it was not
12 a cannabis-related offense;

13 (2) Re-sentencing would not be in the interests of justice; or

14 (3) Re-sentencing would be in the interests of justice, but that the appropriate
15 sentence is something other than the portion of the sentence the individual has already completed.

16 (f) There shall be a presumption that granting the petition would be in the interests of
17 justice due to the decriminalization or legalization of cannabis for adults and the unequal
18 enforcement of cannabis laws. The presumption may be overcome, including in instances where the
19 prosecutor proves by clear and convincing evidence that re-sentencing would not be in the interests
20 of justice because:

21 (1) Additional, more serious charges unrelated to cannabis were dismissed as part of
22 a plea deal; or

23 (2) The offense involved distribution of marijuana to a minor, using a minor to
24 distribute marijuana, or a violation of RSA 318-B:2-e for negligently storing marijuana-infused
25 products, causing a minor to access them.

26 (g) The court may find that re-sentencing is in the interests of justice, but that a
27 complete reduction in the sentence is not in the interests of justice. In those instances, the court
28 shall re-sentence the individual to the lowest sentence that is in the interests of justice, in light of
29 the decriminalization or legalization of cannabis and disparities in arrests and sentencing.

30 (h) A court may not increase any aspect of a sentence in response to a re-sentencing
31 petition filed pursuant to this section.

32 (i) Any person eligible for re-sentencing for cannabis sentences pursuant to this section
33 may file a petition for the assistance of counsel without charge; however, if such person was found to
34 be indigent at his original sentencing, that person shall be entitled to assistance of counsel without
35 charge for the hearing on modification of his sentence without the filing of such petition. No fee
36 shall be charged for filing a petition under this section.

37 651:5-e Certain Crimes Not to be Pursued; Dismissal.

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I. As used in this section:

(a) "Cannabis" means "cannabis" as defined in RSA 651:5-b, I(a).

(b) "Possession limit" means "possession limit" as defined in RSA 651:5-b, I(b).

II.(a) Except to the extent required to dismiss, withdraw, or terminate the charge, no prosecutor shall pursue any charge based on crimes or offenses pending with a court that occurred prior to July 1, 2025, involving a person 21 years of age or older knowingly or purposely obtaining, purchasing, transporting, or possessing, actually or constructively, or having under his or her control, no more than the possession limit of cannabis where the offense occurred before July 1, 2025.

(b) The existence of convictions in other counts within the same case that are not eligible for dismissal pursuant to this section or other applicable laws shall not prevent any conviction otherwise eligible for dismissal under this section from being dismissed pursuant to this section.

III. On November 15, 2025, any guilty verdict, plea, placement in a diversionary program, or other entry of guilt on a matter that was entered prior to that effective date, but the judgment of conviction or final disposition on the matter was not entered prior to that date, and the guilty verdict, plea, placement in a diversionary program, or other entry of guilt solely involved one or more crimes or offenses involving a person 21 years of age or older knowingly or purposely obtaining, purchasing, transporting, manufacturing or possessing, actually or constructively, or having under his or her control, no more than the possession limit of cannabis, shall be vacated by operation of law. The judicial branch, in consultation with the attorney general, may take any administrative action as may be necessary to vacate the guilty verdict, plea, placement in a diversionary program, or other entry of guilt.

3 Effective Date. This act shall take effect upon its passage.

**HB 196-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to annulling, resentencing, or discontinuing prosecution of certain cannabis offenses.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Revenue Fund(s)</i>	General Fund			
Expenditures*	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General, Highway and Turnpike Funds			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	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 Increase	Indeterminable Increase	Indeterminable Increase
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill allows for additional annulments, resentencings, or discontinuations of prosecutions for certain cannabis offenses.

The Department of Corrections states the fiscal impact of this bill is indeterminable as the Department cannot predict the number of individuals that would be affected by the bill. Currently, the Department collects \$100 for annulment investigations. This bill would waive any fees for such investigations. The Department estimates it would take an average of thirty minutes per annulment investigation. The Department anticipates existing staff would conduct these investigations. The hourly wage for staff completing these investigations, (Corrections Protective Service - Group Schedule 33C, Band 5, step 6), is \$48.98 per hour plus a per hour

benefit cost of \$22.38 for a total of \$71.36 per hour. Staff would likely have to conduct the investigations on overtime which would increase the rate to \$101.30 (\$73.47 with benefits of \$27.83).

The Department of Safety, Division of State Police indicates the fiscal impact of this bill is indeterminable, but anticipates it will be significant. This bill calls for additional hearings to determine if it is appropriate to annul or resentence previously prosecuted offenses. The Department states these hearings would require a significant amount of research and preparation for Department of Safety prosecutors, Troopers and other staff. The total hours required for the additional hearings is impossible to predict. In addition, the Department indicates programming will be needed to “automatically” annul records once received by the criminal records unit. This cost is also indeterminable at this time. Removing qualified convictions from one’s record will likely cause a need for additional staff given the 6-month time frame in proposed RSA 651:5-c.

The Judicial Branch states it is not possible to estimate how this change in law would impact the number of filings in the courts. The Branch expects there would be an increase in petitioners for the proposed relief, and therefore an increase in court hearings. The Branch suggests that adjusting some of the bill's provisions might lower the cost to the courts; for example, requiring petitioners to serve the prosecuting agency, rather than requiring the court system to notify the prosecuting agency. An adjustment of the effective date may also help the court system to manage costs by including changes to forms and training to staff in planned updates and trainings.

In addition to the impacts identified above, there may be additional expenditures for county and local prosecutors.

It is assumed that any fiscal impact would occur after FY 2025.

AGENCIES CONTACTED:

Departments of Safety, Corrections and the Judicial Branch