

HB 1610-FN - AS INTRODUCED

2016 SESSION

16-2465

04/10

HOUSE BILL ***1610-FN***

AN ACT legalizing the possession and cultivation of marijuana for personal use.

SPONSORS: Rep. Sylvia, Belk. 6; Rep. Hull, Graf. 9

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill allows a person 21 years of age or older to possess up to 2 ounces of marijuana and to cultivate no more than 6 marijuana plants without penalty.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT legalizing the possession and cultivation of marijuana for personal use.

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

1 1 New Chapter; Possession of Marijuana. Amend RSA by inserting after chapter 318-E the
2 following new chapter:

3 CHAPTER 318-F

4 POSSESSION OF MARIJUANA

5 318-F:1 Definitions. In this chapter:

6 I. "Marijuana" means all parts of the plant of the genus *cannabis* whether growing or not,
7 the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture,
8 salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana
9 concentrate. "Marijuana" shall not include fiber produced from the stalks, oil, or cake made from
10 the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of
11 any other ingredient combined with marijuana to prepare topical or oral administrations, food,
12 drink, or other product.

13 II. "Marijuana accessories" means any equipment, products, or materials of any kind which
14 are used, intended for use, or designed for use for ingesting, inhaling, or otherwise introducing
15 marijuana into the human body.

16 318-F:2 Personal Use of Marijuana. If undertaken by a person 21 years of age or older, the
17 following acts shall not be illegal under New Hampshire law or be a basis for seizure or forfeiture of
18 assets under New Hampshire law:

19 I. Possessing up to 2 ounces of marijuana in a person's primary residence or possession of
20 marijuana accessories.

21 II. Possessing or cultivating no more than 6 marijuana plants, with 3 or fewer being
22 mature, flowering plants, on the premises where the plants were grown.

23 III. Transferring up to one ounce of marijuana to a person who is 21 years of age or older
24 without remuneration.

25 318-F:3 Restrictions on Personal Cultivation; Penalty.

26 I. No person who is 21 years of age or older shall cultivate marijuana plants except as
27 provided in this section.

28 II. Marijuana plants shall not be cultivated in a location where the plants are subject to
29 public view without the use of binoculars, aircraft, or other optical aids.

30 III. A person who cultivates marijuana shall take reasonable precautions to ensure the
31 plants are secure from unauthorized access. Cultivating marijuana in an enclosed, locked space to

1 which unauthorized persons do not have access, or other similar security precautions, shall be
2 prima facie evidence of reasonable precautions.

3 IV. Marijuana cultivation shall only occur on property the cultivator legally owns, leases, or
4 controls, or with the consent of the person who legally owns, leases, or controls the property.

5 V. A person who violates this section shall be guilty of a violation and may be fined not
6 more than \$750.

7 318-F:4 Public Smoking of Marijuana Prohibited; Penalty.

8 I. No person shall smoke marijuana in a public place.

9 II. A person who violates this section shall be guilty of a violation and may be punished by a
10 fine of not more than \$100.

11 318-F:5 Marijuana Accessories Authorized.

12 I. It shall not be illegal under New Hampshire law or be a basis for seizure or forfeiture of
13 assets under New Hampshire law for a person 21 years of age or older to manufacture, possess, or
14 purchase marijuana accessories, or to distribute or sell marijuana accessories to a person who is 21
15 years of age or older.

16 II. A person who is 21 years of age or older may manufacture, possess, obtain, and purchase
17 marijuana accessories, and may distribute, deliver, or sell marijuana accessories to a person who is
18 21 years of age or older.

19 III. Any person who is less than 21 years of age and who possesses marijuana accessories
20 shall be guilty of a violation and shall be fined not less than \$100. Any person who is less than 21
21 years of age and who sells marijuana accessories shall be guilty of a class A misdemeanor and
22 subject to imprisonment for up to 6 months and subject to a fine of up to \$1,000.

23 318-F:6 Employers, Driving, Minors, and Control of Property.

24 I. Nothing in this chapter shall be construed to require an employer to permit or
25 accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of
26 marijuana in the workplace or to affect the ability of employers to have policies restricting the use
27 of marijuana by employees.

28 II. Nothing in this chapter shall be construed to permit driving or operating under the
29 influence of drugs or liquor pursuant to RSA 265-A, nor shall this section prevent the state from
30 enacting and imposing penalties for driving under the influence of or while impaired by marijuana.

31 III. Nothing in this chapter shall be construed to permit the transfer of marijuana, with or
32 without remuneration, to a person under the age of 21, or to allow a person under the age of 21 to
33 purchase, possess, use, transport, grow, or consume marijuana.

34 IV. Nothing in this chapter shall prohibit a state or county correctional facility from
35 prohibiting the possession, consumption, use, display, transfer, distribution, sale, transportation, or
36 growing of marijuana on or in the correctional facility's property.

37 V. Nothing in this chapter shall prohibit a person or other entity that legally owns, leases,
38 or controls any property from prohibiting or otherwise regulating the sale, use, or growing of

1 marijuana on or in the property.

2 5 Controlled Drug Act; Penalties. Amend the introductory paragraph in RSA 318-B:26, I to
3 read as follows:

4 I. Any person who manufactures, sells, prescribes, administers, or transports or possesses
5 with intent to sell, dispense, or compound any controlled drug, controlled drug analog or any
6 preparation containing a controlled drug, except as authorized in this chapter **or as otherwise**
7 **authorized by law**; or manufactures, sells, or transports or possesses with intent to sell, dispense,
8 compound, package or repackage (1) any substance which he **or she** represents to be a controlled
9 drug, or controlled drug analog, or (2) any preparation containing a substance which he **or she**
10 represents to be a controlled drug, or controlled drug analog, shall be sentenced as follows, except as
11 otherwise provided in this section:

12 6 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(c)(5) to read as follows:

13 (5) [~~Marijuana in a quantity of one ounce or more including any adulterants or~~
14 ~~dilutants, or~~] Hashish in a quantity of 5 grams or more including any adulterants or dilutants;

15 7 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(d)(1) to read as follows:

16 (1) [~~Marijuana in a quantity of less than one ounce including any adulterants or~~
17 ~~dilutants, or~~] Hashish in a quantity of less than 5 grams including any adulterants or dilutants;

18 8 Controlled Drug Act; Penalties. Amend the introductory paragraph in RSA 318-B:26, II to
19 read as follows:

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

25 9 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(d) to read as follows:

26 (d) In the case of **more than 2 ounces of** marijuana, including any adulterants or
27 dilutants, [~~or 5 grams or less of hashish,~~] the person shall be guilty of a class A misdemeanor.

28 10 Model Drug Dealer Liability Act; Definitions. Amend RSA 318-C:4, I to read as follows:

29 I. "Illegal drug" means any drug which is a schedule I-IV drug under RSA 318-B, **the**
30 **possession, use, manufacture, sale, or transportation of which is not otherwise authorized**
31 **by law**.

32 11 Effective Date. This act shall take effect 60 days after its passage.

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HB 1610-FN- FISCAL NOTE

AN ACT legalizing the possession and cultivation of marijuana for personal use.

FISCAL IMPACT:

The Departments of Justice, Health and Human Services, and Corrections, Judicial Branch, Judicial Council, New Hampshire Association of Counties, and New Hampshire Municipal Association state this bill, **as introduced**, will have an indeterminable fiscal impact on state, county and local expenditures and state revenue in FY 2017 and in each year thereafter. There will be no fiscal impact on county or local revenue.

METHODOLOGY:

The Department of Justice states this bill would legalize the possession of up to 2 ounces of marijuana, possession or cultivation of up to 6 marijuana plants, possession of marijuana accessories by any person 21 years of age or older, and would eliminate such possession as a basis for a forfeiture action. The Department states, because cases involving possession of marijuana are prosecuted by local and county prosecutors, the bill would not impact the Department's prosecutorial function. The Department would handle any appeals from convictions under the newly created offense, but indicates it could do so within its current budget. The Department processes all drug forfeitures for the State. During the past two years, the Department handled 12 forfeitures stemming from possession of marijuana which could not be prosecuted under the proposed bill. The forfeitures totaled \$21,000. The Department states 45 percent of this amount, or \$9,450, was deposited in the Drug Forfeiture Fund and assumes under this bill, annual revenue to the fund would decrease by approximately \$5,000. The Attorney General's Drug Task Force investigates street-level crimes involving the sale and possession of controlled drugs, including marijuana. The Department assumes the task force's efforts would be redirected away from marijuana cases to those involving other controlled drugs and there would be no savings to the task force.

The Judicial Branch states the proposed bill provides for violation level offenses in proposed RSA 318-F:3, V, and proposed RSA 318-F:4, II for violating certain restrictions on the personal cultivation of marijuana and for smoking marijuana in a public place. The bill allows individuals over the age of 21 to manufacture, possess, or purchase marijuana accessories, but provides that possession of those accessories by a person under the age of 21 is a violation level offense and sale of marijuana accessories by those under 21 is a class A misdemeanor. The Branch identified the following provisions of the bill with a potential fiscal impact:

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- Legalizing the possession of up to two ounces of marijuana would reduce the number of possession cases. Possession of any amount is currently a class A misdemeanor pursuant to RSA 318-B:26, II(d). The Branch does not have information on how many fewer class A misdemeanor prosecutions would result from the bill. The estimated cost to the Judicial Branch of an average class A misdemeanor case in the district division of the circuit court will be \$70.33 in FY 2017 and \$73.73 in FY 2018.
- Legalizing possession and cultivation of up to six marijuana plants for personal use would reduce the number of felony cases for manufacture of marijuana under RSA 318-B:26,I. The Branch does not have information on how many violations represent cultivation of up to six plants by persons over 21 years of age. The Branch states such offenses are classified as routine criminal cases in the superior court and the estimated cost to of an average routine criminal case in the superior court will be \$448.84 in FY 2017 and \$469.80 in FY 2018.
- Legalizing transferring up to one ounce of marijuana to a person 21 years old or older without remuneration would reduce the number of cases for the sale of marijuana. Currently the sale of up to one ounce is a felony pursuant to various provisions in RSA 318-B:26, I(d). The Branch does not have information on how many fewer felony prosecutions would result from the bill. The Branch states such offenses are classified as routine criminal cases in the superior court and the estimated cost of an average routine criminal case in the superior court will be \$448.84 in FY 2017 and \$469.80 in FY 2018.
- The bill provides for violation level offenses in proposed RSA 318-F:3, V and RSA 318-F:4, II for violating restrictions on personal cultivation and for smoking marijuana in a public place. The Branch has no information on which to estimate how many additional violations will result from these sections, but does have information on the average cost. The estimated cost to the Judicial Branch of an average violation level offense in the district division of the circuit court will be \$47.91 in FY 2017 and \$50.93 in FY 2018.
- The bill permits individuals 21 years old or older to manufacture, possess, or purchase marijuana accessories. Currently manufacture, delivery, or possession with intent to deliver drug paraphernalia is an unspecified misdemeanor pursuant to RSA 318-B:26, III (c). The Branch has no information on how many fewer unspecified misdemeanors will result from the bill, but does have average cost information. Regarding the cost of an average misdemeanor, misdemeanors can be class A or class B, with the presumption being class B in accordance with RSA 625:9, IV. The estimated cost of an average class A misdemeanor case in the district division of the circuit court will be \$70.33 in FY 2017 and \$73.73 in FY 2018. That cost for a class B misdemeanor case will be \$49.56 in FY 2017 and \$52.61 in FY 2018.
- Proposed RSA 318-F:5, III provides that a person younger than 21 years of age who possesses marijuana accessories is guilty of a violation level offense. Currently, that offense is an unspecified misdemeanor. The Branch has no information on how many misdemeanor

offenses would be reduced to violations. The estimated savings per case to the branch for reducing a misdemeanor A to a violation level offense would be \$22.42 in FY 2017 and \$22.80 in FY 2018. The estimated savings per case for reducing a misdemeanor B to a violation level offense would be minimal.

- Proposed RSA 318-F;5, III provides that a person younger than 21 years old who sells marijuana is guilty of a class A misdemeanor. Currently this offense is an unspecified misdemeanor. This provision could increase some offenses from a class B misdemeanor to class A. Based on the average costs, such a change would increase the cost to the Branch for these cases by \$20.77 in FY 2017 and \$21.12 in FY 2018.

The Branch indicates none of the cost figures consider the cost of appeals that may be taken following trial. The Branch states the cost figures for violation level offenses, class A and B misdemeanors, and routine criminal cases are based on studies of judicial and clerical weighted caseload times for processing the average case. The Branch indicates those studies are now eight to ten years old and may not have current validity. In addition, the Branch states there have been during that time span with respect to how cases are processed that impacted average case processing times.

The Judicial Council states this bill legalizes the possession and manufacture of limited amounts of marijuana and permits the transfer of up to one ounce without remuneration. The Council states, under current law possession of less than one ounce of marijuana is punishable as a class A misdemeanor and the manufacture and sale of any amount are punishable as a felony. The Council assumes that most stand-alone, small-quantity marijuana possession prosecutions are brought as class B misdemeanors, which do not carry with them a potential sentence and would not trigger a right to the assistance of counsel at State expense for the indigent accused. The council assumes stand-alone class A misdemeanor marijuana possession offenses are rarities and most marijuana related prosecutions arise from some other criminal justice matter. Often the related matters give rise to criminal charges that are punishable by jail time. The Council states that when at least one charge in a criminal case is punishable by jail time, then the assembled charges that make up a "case" will trigger the right to assistance of counsel for the indigent accused, even though separately the individual charges may not trigger such right. The Council assumes that legalizing the manufacture of marijuana in people's homes and fenced in yards will lead to more thefts and burglaries carried out by people trying to steal marijuana for sale in New Hampshire or another State where cultivation and possession are illegal. The Council assumes juveniles and people under 21 would remain eligible for prosecution for marijuana related charges. The Council states simple possession cases are burdening the Judicial Council and legalization of marijuana for people of 21 years of age would have a profound effect on Judicial Council expenditures for the defense of indigent accused. The Council indicates based on the varied and sometimes counteracting effect of

these assumptions, and the aspects of marijuana manufacture and distribution that would remain illegal it is difficult to predict of the number of misdemeanor and felony cases would decrease or increase under the proposed bill.

The Department of Health and Human Services, Bureau of Drug and Alcohol Services states this bill proposes legalizing the possession and cultivation of marijuana for personal use. The Bureau states there is considerable uncertainty about the impact that legalizing the personal use of marijuana in New Hampshire would have on public budgets, consumption and treatment. The Bureau assumes there may be an increase in marijuana misuse and dependence treatment needs with the legalization of possession of up to 2 ounces of marijuana by persons over 21 years of age. The Department's Bureau of Licensing and Certification assumes utilization of the Therapeutic Cannabis Program (TCP) would decrease as some individuals would choose to cultivate or obtain marijuana on their own instead of purchasing it through an Alternative Treatment Center (ATC). The Department states qualifying patients and designated care givers pay \$50 annually for a registry card. The Department assumes the bill would impact program revenue, the cost of registry cards, and the viability of ATCs.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general population for the fiscal year ending June 30, 2015 was \$34,336. The average cost to supervise an individual by the Department's Division of Field Services for the fiscal year ending June 30, 2015 was \$520.

The New Hampshire Association of Counties states and fiscal impact to the counties would be in the areas of prosecution and incarceration. The Association is not able to determine the fiscal impact but, indicates incarceration costs are \$85 to \$110 per day and prosecution costs vary throughout the state.

The New Hampshire Municipal Association states there may be an indirect reduction in law enforcement expenditures because fewer violations for possession of marijuana are likely to be prosecuted. The Association states any such reduction is speculative and cannot be determined. The Association indicates it is unlikely that there would be an impact on local revenue.