

SB 14-FN - AS AMENDED BY THE HOUSE

01/30/2025 0140s
5Jun2025... 2372h

2025 SESSION

25-0228
09/02

SENATE BILL ***14-FN***

AN ACT relative to the penalty for certain fentanyl-related offenses; relative to establishing a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting; and relative to amending the penalties for the possession and use of a quantity of psilocybin for persons 18 years of age or older.

SPONSORS: Sen. Gannon, Dist 23; Sen. Lang, Dist 2; Sen. Innis, Dist 7; Sen. Birdsell, Dist 19; Sen. Abbas, Dist 22; Sen. Avard, Dist 12; Sen. Rochefort, Dist 1; Sen. Murphy, Dist 16; Rep. Weyler, Rock. 14; Rep. M. Pearson, Rock. 34; Rep. Bernardy, Rock. 36

COMMITTEE: Judiciary

AMENDED 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.
- III. Modifies the penalties for a person 18 years of age or older to obtain, purchase, transport, possess, or use a certain quantity of psilocybin.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to the penalty for certain fentanyl-related offenses; relative to establishing a mandatory minimum sentence for the crime of distribution of a controlled drug with death resulting; and relative to amending the penalties for the possession and use of a quantity of psilocybin for persons 18 years of age or older.

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

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

(a) In the case of a violation involving any of the following, a person shall be sentenced to a maximum term of imprisonment of not more than 30 years, a fine of not more than \$500,000, or both. If any person commits such a violation after one or more prior offenses as defined in RSA 318-B:27, such person may be sentenced to a maximum term of life imprisonment, a fine of not more than \$500,000, or both:

(1) Five ounces or more of a mixture or substance containing any of the following, including any adulterants or dilutants:

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; or

(B) Cocaine other than crack cocaine, its salts, optical and geometric isomers, and salts of isomers; or

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(2) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or phencyclidine (PCP), or its analog, in a quantity of 10 grams or more including any adulterants or dilutants.

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

(A) *A person subject to a mandatory minimum sentence prescribed in subparagraph (3) 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:*

(i) *The defendant has no prior convictions for violent felonies, as defined in RSA 651:5, XI, or any drug-related offenses under RSA 318-B, or substantially similar convictions in any other territory, state, or federal jurisdiction, within the past 7 years.*

(ii) *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.*

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

(iv) *The defendant, to the extent that he or she is able as determined by the court 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.*

(v) *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.*

(vi) *The defendant did not knowingly possess or 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:*

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

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

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

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

(i) Biweekly drug testing, if applicable.

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

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

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

(4) Methamphetamine or its analog, in a quantity of 5 ounces or more, including adulterants or dilutants.

2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, IX to read as follows:

IX. Any person who manufactures, sells, or dispenses methamphetamine, lysergic acid[?] diethylamide (**LSD**), phencyclidine (PCP) or any other controlled drug classified in schedules I or II, or any controlled drug analog thereof, in violation of RSA 318-B:2, I or I-a, **excluding any fentanyl class drug, including any adulterants or dilutants**, 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 person who manufactures, sells, or dispenses a fentanyl class drug, including any adulterants or dilutants, in violation of 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:

(a) The injection, inhalation or ingestion of the substance is an antecedent but for which the death would not have occurred; and

(b) The death was not:

(1) Too remote in its occurrence as to have just bearing on the person's liability; or

(2) Too dependent upon conduct of another person which was unrelated to the injection, inhalation or ingestion of the substance or its effect, as to have a just bearing on the person's liability. It shall not be a defense to a prosecution under this section that the decedent contributed to his own death by his purposeful, knowing, reckless or negligent injection, inhalation or ingestion of the substance or by his consenting to the administration of the substance by another. Nothing in this section shall be construed to preclude or limit any prosecution for homicide. A conviction arising under this section shall not merge with a conviction of one as a drug enterprise leader or for any other offense defined in this chapter.

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

IX-b.(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, XI, 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 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 providing 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.

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

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

(1) Biweekly drug testing, if applicable.

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

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

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

4 New Section; Personal Possession of Psilocybin. Amend RSA 318-B by inserting after section 2-e the following new section:

318-B:2-f Personal Possession of Psilocybin.

I. Notwithstanding RSA 318-B:2 and 318-B:26, a person 18 years of age or older who obtains, purchases, transports, possesses, or uses 3/4 of an ounce or less of psilocybin shall be subject to the following penalties:

(a) For a first offense, a misdemeanor.

(b) For a second or subsequent offense, the person shall be subject to the penalties in RSA 318-B:26.

II. Any person under 18 years of age who obtains, purchases, transports, possesses, or uses psilocybin shall be subject to the penalties in RSA 318-B:26.

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

LBA
25-0228
6/9/25

SB 14-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2025-2372h)

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FISCAL IMPACT:

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
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 2025	FY 2026	FY 2027	FY 2028
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