

HB 1526-FN - AS AMENDED BY THE HOUSE

8Mar2012... 0593h

2012 SESSION

12-2650

04/01

HOUSE BILL ***1526-FN***

AN ACT relative to possession of less than one-half ounce of marijuana.

SPONSORS: Rep. Panek, Straf 3; Rep. Tasker, Rock 1; Rep. Watrous, Merr 12; Rep. Warden, Hills 7

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill establishes penalties for any person who possesses less than one-half ounce of marijuana.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to possession of less than one-half ounce of marijuana.

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

1 New Section; Controlled Drug Act; Possession of Less Than One-Half Ounce of Marijuana. Amend RSA 318-B by inserting after section 2-b the following new section:

318-B:2-c Possession of Less Than One-Half Ounce Marijuana.

I. Any person 18 years of age or older who is in possession of less than one-half ounce of marijuana, including any adulterants or dilutants, and who engages in any conduct prohibited under RSA 318-B:2 shall be guilty of:

(a) A violation and subject to a fine not to exceed \$250 and forfeiture of the marijuana for a first offense.

(b) A violation and subject to a fine not to exceed \$500 and forfeiture of the marijuana for a second offense.

(c) A class A misdemeanor and subject to a fine not to exceed \$1,000 and forfeiture of the marijuana for a third or subsequent offense.

II.(a) Any person under 21 years of age who is in possession of less than one-half ounce of marijuana, including any adulterants or dilutants, and who engages in any conduct prohibited under RSA 318-B:2 shall be guilty of:

(1) A violation and subject to a fine not to exceed \$250 and forfeiture of the marijuana for a first offense.

(2) A violation and subject to a fine not to exceed \$500 and forfeiture of the marijuana for a second offense.

(3) A class A misdemeanor and subject to a fine not to exceed \$1,000 and forfeiture of the marijuana for a third or subsequent offense.

(b) The parents or legal guardians of any offender under 18 years of age shall be notified of the offense. The court may order any offender under 21 years of age at the time of the offense to complete an approved drug awareness program, at the offender's expense, within one year of the date of the offense. Further, the court may order the offender to perform community service which shall be completed within one year of the date of the offense. The offender shall furnish the court with evidence of completion of a required drug awareness program or required community service. An offender who fails to complete either a required drug awareness program or community service, or both, shall be subject to a fine of up to \$500 for a first offense and a fine of up to \$1,000 for a second or subsequent offense.

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

(d) In the case of marijuana *in a quantity of less than one-half ounce*, including any adulterants or dilutants~~[, or]~~, ***the person shall be guilty as provided in RSA 318-B:2-c. In the case of 5 grams or less of hashish, the person shall be guilty of a class A misdemeanor.***

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

(a) Controls any premises or vehicle where he *or she* knows a controlled drug or its analog is illegally kept or deposited, ***except if the controlled drug is less than one-half ounce of marijuana as provided in RSA 318-B:2-c;***

4 Effective Date. This act shall take effect January 1, 2013.

LBAO

12-2650

12/09/11

HB 1526-FN - FISCAL NOTE

AN ACT relative to possession of less than one-half ounce of marijuana.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, and New Hampshire Association of Counties state this bill may decrease state expenditures, state revenue, and county expenditures by an indeterminable amount in FY 2013 and each year thereafter. There is no fiscal impact on local expenditures, or county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill changes the possession of less than one ounce of marijuana from a class A misdemeanor to a violation, decriminalizes controlling premises or a vehicle in which less than one ounce of marijuana is found (currently this is a misdemeanor offense), provides for a fine not to exceed \$100 for person 18 years of age or older in possession of less than one ounce of marijuana, and provides for an offender under the age of 18 to complete a drug awareness program and/or community service with a \$1,000 fine for failure to do so. The Branch has no information to estimate how many cases would be reduced from a class A misdemeanor or how many misdemeanors would no longer be brought as a result of decriminalizing less than one ounce of marijuana found in controlling premises or a vehicle to determine the fiscal impact on expenditures but does have information on the cost for processing a violation and misdemeanors. All costs are estimated based on case weight information from the last needs assessment completed in 2005. The Branch states a violation will cost \$41.92 per case in FY 2013 and \$43.20 per case in FY 2014 and each year thereafter, and a class A misdemeanor will cost \$59.11 per case in FY 2013 and \$61.31 per case in FY 2014 and each year thereafter. For each class A misdemeanor that is reduced to a violation the cost will decrease by \$17.19 in FY 2013 and \$18.11 in FY 2014 and each year thereafter. For each misdemeanor that is not brought as a result of decriminalizing less than one ounce of marijuana found in controlling premises or a vehicle, costs would decrease. A misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor. As noted above, a class A misdemeanor will cost \$59.11 per case in FY 2013 and \$61.31 per case in FY 2014 and each year thereafter,

and a class B misdemeanor will cost \$43.19 per case in FY 2013 and \$44.54 per case in FY 2014 and each year thereafter. The Branch also states this bill may impact fine revenue as it limits the fine to \$100, with the possibility of a \$1,000 fine for those under 18 years of age that fail to complete a drug awareness program and/or community service. A class A misdemeanor allows for a fine up to \$2,000. The Branch is not able to determine the exact decrease to revenue.

The Judicial Council states this bill will result in an indeterminable decrease in general fund expenditures. The Council states to the extent this bill results in fewer misdemeanor offenses where the right to counsel would exist, costs will decrease. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states there may not be additional costs associated with appeals.

The New Hampshire Association of Counties states to the extent less individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have decreased expenditures. The Association is unable to determine the number of individuals who may not be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Department of Justice states this bill will not have a fiscal impact on the Department because it is not typically involved with cases involving less than one ounce of marijuana and rarely is there an appeal filed.