

# Committee Report

**CONSENT CALENDAR**

**January 28, 2020**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Criminal Justice and Public Safety  
to which was referred HB 1614-FN,**

**AN ACT relative to the penalties for use or possession of  
a controlled drug. Having considered the same, report  
the same with the following resolution: RESOLVED,  
that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Laura Pantelakos**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1614-FN</b>
Title:	<b>relative to the penalties for use or possession of a controlled drug.</b>
Date:	<b>January 28, 2020</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### STATEMENT OF INTENT

This is one of three bills that came before the committee concerning changes in the penalties for possession or use of a controlled substance. At the public hearing the sponsor recognized that there were some flaws in the bill. The committee will address changes in penalties for controlled substances in HB 1625 and HB 1641, and therefore voted to recommend that this bill be inexpedient to legislate.

Vote 20-0.

Rep. Laura Pantelakos  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Criminal Justice and Public Safety

**HB 1614-FN**, relative to the penalties for use or possession of a controlled drug. **INEXPEDIENT TO LEGISLATE.**

Rep. Laura Pantelakos for Criminal Justice and Public Safety. This is one of three bills that came before the committee concerning changes in the penalties for possession or use of a controlled substance. At the public hearing the sponsor recognized that there were some flaws in the bill. The committee will address changes in penalties for controlled substances in HB 1625 and HB 1641, and therefore voted to recommend that this bill be inexpedient to legislate. **Vote 20-0.**

Original: House Clerk

Cc: Committee Bill File

## COMMITTEE REPORT

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Bill Number:	<b>HB 1614-FN</b>
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This is one of three bills that came before the committee concerning changes in the penalties for possession or use of a controlled substance. At the public hearing the sponsor recognized that there were some flaws in the bill. The committee will address changes in penalties for controlled substances in HB 1625 and HB 1641, and voted 20-0 to recommend HB 1614 bill Inexpedient to Legislate.

*BR*

Vote 20-0.

Rep. Laura Pantelakos  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

# COMMITTEE REPORT

COMMITTEE: \_\_\_\_\_

BILL NUMBER: HB 1614

TITLE: relative to penalties for  
the use or possession of controlled drugs

DATE: 1/28/2020

CONSENT CALENDAR: YES  NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
\_\_\_\_\_

## STATEMENT OF INTENT:

The committee felt this bill lower the penalty to far and there were other flaws in the bill. The sponsor said he would bring a amendment in but fail to do so.

COMMITTEE VOTE: 20-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Laura Cantelero

For the Committee

# Voting Sheets



HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1614-FN

**BILL TITLE:** relative to the penalties for use or possession of a controlled drug.

**DATE:** January 28, 2020

**LOB ROOM:** 204

**MOTIONS:** INEXPEDIENT TO LEGISLATE

Moved by Rep. Pantelakos

Seconded by Rep. Wallace

Vote: 20-0

CONSENT CALENDAR: YES

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

  
Rep Linda Harriott-Gathright, Clerk



HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1614-FN

BILL TITLE: relative to the penalties for use or possession of a controlled drug.

DATE: 1/28/20

LOB ROOM: 204

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. Pantelakos Seconded by Rep. Wallace Vote: 20/0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

CONSENT CALENDAR: \_\_\_\_ YES \_\_\_\_ NO

Minority Report? \_\_\_\_ Yes \_\_\_\_ No If yes, author, Rep: \_\_\_\_\_ Motion: \_\_\_\_\_

Respectfully submitted: \_\_\_\_\_  
Rep Linda Harriott-Gathright, Clerk



2020 SESSION

Criminal Justice and Public Safety

Bill #: HB 1614 Motion: ITL AM #: Pm Exec Session Date: 1/28/20

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Cushing, Robert Renny Chairman	✓		
Rodd, Beth Vice Chairman	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Harriott-Gathright, Linda C. Clerk	✓		
Opderbecke, Linn	✓		
Bordenet, John	✓		
Meuse, David	✓		
Murphy, Nancy A.	✓		
Newman, Ray E.	✓		
Radhakrishnan, Julie	✓		
Swinburne, Sandy L.	✓		
Welch, David A.	✓		
Fields, Dennis H.	✓		
Green, Dennis E.	✓		
Testerman, Dave	✓		
Wallace, Scott	✓		
Abbas, Daryl A.	✓		
Roy, Terry	✓		
Ober, Lynne	✓		
<b>TOTAL VOTE:</b>	<u>20</u>	<u>0</u>	

# Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1614-FN

**BILL TITLE:** relative to the penalties for use or possession of a controlled drug.

**DATE:** January 21, 2020

**LOB ROOM:** 204 **Time Public Hearing Called to Order:** 11:00 a.m.

**Time Adjourned:** <<End

Time>>

**Committee Members:** Reps. Cushing, Rodd, Harriott-Gathright, Pantelakos, O'Hearne, Opderbecke, Bordenet, Meuse, Murphy, R. Newman, Swinburne, Welch, Green, Testerman and Roy

**Bill Sponsors:**

Rep. Abramson

Rep. Fowler

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Max Abramson, Sponsor**

- Model after the Portugal approach
- decriminalize drug use
- Portugal drug issues 2001 decriminalize
- Portugal has a 98% lower death rate from heroin since decriminalizing drug issues.
- Reduce 30 years to 2 years.
- increase the fine increasing revenue for the state

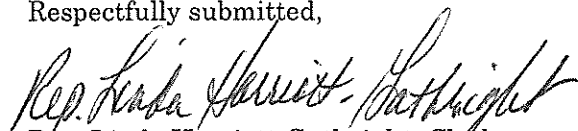
**Dr. Joe Hannon, NH Harm Reduction Coalition - supports**

- rates of overdose and crime drop
- people are offered treatment (voluntarily and non voluntarily)
- 
- Sarah Blodgett, Judicial Council - supports
- Indigent population
- in support of possession penalty reduction
- \_\_\_\_\_ bill - most

**Josh Yokela - support**

- support the effort in reducing the penalties
- support removing mandatory sentence and allows judges ???????

Respectfully submitted,

  
Rep. Linda Harriott-Gathright, Clerk



(1)

1/21/20

HB 1614  
sponsor  
①

Rep Max Abramson

- Model after the Portugal Approach
- Decriminalize drug use
- Portugal decriminalized all drug issues 2001  
decriminalize
- Portugal has a 98% lower death rate from heroin since decriminalizing drug issues
- Reduced 30yrs to 2yrs, however increase the fine increasing revenue for the state

support

② Dr Hannon New Hampshire Harm Reduction Coalition

- Rates of overdose and crime drop
- People are offered treatment (voluntarily and non voluntarily)

support

③ Sarah Blodgett Judicial Council

Indigent Populations

- In support of possession penalty reduction
- Detalon bill - most

support

④ Josh Yokela Roch 33

- Support the effort in reducing the penalties
- Support removing mandatory sentence and allows judges dis

Pro 5 <sup>Con</sup> Against 2

# Testimony









# **Fiscal Note**

Bill as  
Introduced

HB 1614-FN - AS INTRODUCED

2020 SESSION

20-2369  
04/08

HOUSE BILL

***1614-FN***

AN ACT relative to the penalties for use or possession of a controlled drug.

SPONSORS: Rep. Abramson, Rock. 20; Rep. Fowler, Rock. 20

COMMITTEE: Criminal Justice and Public Safety

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ANALYSIS

This bill provides penalties for controlled drugs in a quantity that would not be fatal.

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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 Twenty*

AN ACT relative to the penalties for use or possession of a controlled drug.

*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 to read as follows:  
2 318-B:26 Penalties.

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

10 (a) In the case of a violation involving any of the following, a person shall be sentenced  
11 to a maximum term of imprisonment of not more than [30] 2 years, a fine of not more than \$500,000,  
12 or both. If any person commits such a violation after one or more prior offenses as defined in RSA  
13 318-B:27, such person may be sentenced to a maximum term of [~~life imprisonment~~] **not more than**  
14 **10 years**, a fine of not more than \$500,000, or both:

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

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

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

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

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

25 (3) Heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of 5  
26 grams or more, including any adulterants or dilutants.

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

29 (b) In the case of a violation involving any of the following, a person [~~may be sentenced~~  
30 ~~to a maximum term of imprisonment of not more than 20 years, a fine of not more than \$300,000, or~~  
31 ~~both~~] **shall be guilty of a violation and may be fined not more than 5 times the street value**

1 *of the controlled drug or controlled drug analog.* If any person commits such a violation after  
2 one or more prior offenses as defined in RSA 318-B:27, such person [~~may be sentenced to a term of~~  
3 ~~imprisonment of not more than 40 years, a fine of not more than \$500,000, or both~~] *shall be guilty*  
4 *of a class A misdemeanor:*

5 (1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other  
6 than crack cocaine, in a quantity of 1/2 ounce or more, including any adulterants or dilutants;

7 (2) A substance classified in schedule I or II other than those specifically covered in  
8 this section, or the analog of any such substance, in a quantity of one ounce or more including any  
9 adulterants or dilutants;

10 (3) Lysergic acid diethylamide, or its analog, in a quantity of less than 100  
11 milligrams including any adulterants or dilutants, or where the amount is undetermined, or  
12 phencyclidine (PCP) or its analog, in a quantity of less than 10 grams, including any adulterants or  
13 dilutants, or where the amount is undetermined;

14 (4) Heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of one  
15 gram or more, including any adulterants or dilutants;

16 (5) Methamphetamine or its analog, in a quantity of one ounce or more including any  
17 adulterants or dilutants;

18 (6) Marijuana in a quantity of 5 pounds or more including any adulterants or  
19 dilutants, or hashish in a quantity of one pound or more including any adulterants and dilutants;

20 (7) Flunitrazepam in a quantity of 500 milligrams or more.

21 (c) In the case of a violation involving any of the following, a person may be sentenced to  
22 a maximum term of imprisonment of not more than 7 years, a fine of not more than \$100,000, or  
23 both. If any person commits such a violation after one or more prior offenses as defined in RSA 318-  
24 B:27, such person may be sentenced to a maximum term of imprisonment of not more than 15 years,  
25 a fine of not more than \$200,000, or both:

26 (1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other  
27 than crack cocaine, in a quantity less than 1/2 ounce including any adulterants or dilutants;

28 (2) A substance or mixture classified as a narcotic drug in schedule I or II other than  
29 those specifically covered in this section, or the analog of any such substance, in a quantity of less  
30 than one ounce including any adulterants or dilutants;

31 (3) Methamphetamine, or its analog in a quantity of less than one ounce including  
32 any adulterants or dilutants;

33 (4) Heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of less  
34 than one gram, including any adulterants or dilutants;

35 (5) Marijuana in a quantity of one ounce or more including any adulterants or  
36 dilutants, or hashish in a quantity of 5 grams or more including any adulterants or dilutants;

37 (6) Flunitrazepam in a quantity of less than 500 milligrams;



1 (7) Any other controlled drug or its analog, other than those specifically covered in  
2 this section, classified in schedules I, II, III or IV.

3 (d) In the case of a violation involving any of the following, a person may be sentenced to  
4 a maximum term of imprisonment of not more than 3 years, a fine of not more than \$25,000, or both.  
5 If any person commits such a violation after one or more prior offenses as defined in RSA 318-B:27,  
6 such person may be sentenced to a maximum term of imprisonment of not more than 6 years, a fine  
7 of not more than \$50,000, or both:

8 (1) Marijuana in a quantity of less than one ounce including any adulterants or  
9 dilutants, or hashish in a quantity of less than 5 grams including any adulterants or dilutants;

10 (2) Any schedule V substance or its analog.

11 II. Any person who knowingly or purposely obtains, purchases, transports, or possesses  
12 actually or constructively, or has under his or her control, any controlled drug or controlled drug  
13 analog, or any preparation containing a controlled drug or controlled drug analog, except as  
14 authorized in this chapter, shall be sentenced as follows, except as otherwise provided in this  
15 section:

16 (a) In the case of a controlled drug or its analog, classified in schedules I, II, III, or IV,  
17 other than those specifically covered in this section, the person shall be guilty of a class B [~~felony~~]  
18 *misdemeanor*, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more  
19 than \$25,000 may be imposed. If any person commits such a violation after one or more prior  
20 offenses as defined in RSA 318-B:27, such person shall be guilty of a class A [~~felony~~] *misdemeanor*,  
21 except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of up to \$50,000 may be  
22 imposed.

23 (b) [~~In the case of a controlled drug or its analog classified in schedule V, the person~~  
24 ~~shall be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more~~  
25 ~~than \$15,000, or both. If a person commits any such violation after one or more prior offenses as~~  
26 ~~defined in RSA 318-B:27, such person shall be guilty of a class B felony, except that notwithstanding~~  
27 ~~the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be imposed.~~

28 (e) In the case of more than 3/4 ounce of marijuana or more than 5 grams of hashish,  
29 including any adulterants or dilutants, the person shall be guilty of a [~~misdemeanor~~] *violation*. In  
30 the case of marijuana-infused products possessed by persons under the age of 21 or marijuana-  
31 infused products as defined in RSA 318-B:2-e, other than a personal-use amount of a regulated  
32 marijuana-infused product as defined in RSA 318-B:2-c, I(b), that are possessed by a person 21 years  
33 of age or older, the person shall be guilty of a [~~misdemeanor~~] *violation*.

34 [(d)] (c) In the case of 3/4 ounce or less of marijuana or 5 grams or less of hashish,  
35 including any adulterants or dilutants, the person shall be guilty of a violation pursuant to RSA 318-  
36 B:2-c. In the case of a person 21 years of age or older who possesses a personal-use amount of a

1 regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b), the person shall be guilty of a  
2 violation pursuant to RSA 318-B:2-c.

3 ~~[(e) In the case of a residual amount of a controlled substance, as defined in RSA 318-~~  
4 ~~B:1, XXIX a, a person shall be guilty of a misdemeanor if the person is not part of a service syringe~~  
5 ~~program under RSA 318-B:43.]~~

6 III. A person shall be guilty of a *class B* misdemeanor who:

7 (a) Except as provided in RSA 318-B:2-c, controls any premises or vehicle where he or  
8 she knows a controlled drug or its analog is illegally kept or deposited;

9 (b) Aids, assists or abets a person in his presence in the perpetration of a crime  
10 punishable under paragraph II of this section, knowing that such person is illegally in possession of  
11 a controlled drug or its analog.

12 (c) ~~[Manufactures with the intent to deliver, delivers or possesses with the intent to~~  
13 ~~deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or~~  
14 ~~possessed for one or more of the uses set forth in RSA 318-B:2, II.~~

15 (d) Places an advertisement in violation of RSA 318-B:2, III.

16 III-a. [Repealed.]

17 IV. Any person who attempts or conspires to commit any offense defined in this chapter is  
18 punishable by imprisonment or a fine or both, which may not exceed the maximum punishment  
19 prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

20 V. Any person who violates this chapter by manufacturing, selling, prescribing,  
21 administering, dispensing, or possessing with intent to sell, dispense, or compound any controlled  
22 drug or its analog, in or on or within 1,000 feet of the real property comprising a public or private  
23 elementary, secondary, or secondary vocational-technical school, may be sentenced to a term of  
24 imprisonment or fine, or both, up to twice that otherwise authorized by this section. Except to the  
25 extent a greater minimum sentence is otherwise provided by this chapter, a sentence imposed under  
26 this paragraph shall include a mandatory minimum term of imprisonment of not less than one year.  
27 ~~[Neither the whole nor any part of the mandatory minimum sentence imposed under this paragraph~~  
28 ~~shall be suspended or reduced.]~~

29 VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318-B:2,  
30 XII as a drug enterprise leader ~~[shall]~~ *may* be sentenced to a ~~[mandatory minimum term of not less~~  
31 ~~than]~~ *maximum term of* 25 years and may be sentenced to a maximum term of not more than life  
32 imprisonment. The court may also impose a fine not to exceed \$500,000 or 5 times the street value  
33 of the controlled drug or controlled drug analog involved, whichever is greater. Upon conviction, the  
34 court shall impose the mandatory sentence unless the defendant has pleaded guilty pursuant to a  
35 negotiated agreement or, in cases resulting in trial, the defendant and the state have entered into a  
36 post-conviction agreement which provides for a lesser sentence. The negotiated plea or post-  
37 conviction agreement may provide for a specified term of imprisonment within the range of ordinary

1 or extended sentences authorized by law, a specified fine, or other disposition. In that event, the  
 2 court at sentencing shall not impose a lesser term of imprisonment or fine than that expressly  
 3 provided for under the terms of the plea or post-conviction agreement.

4 VII. Any person who violates RSA 318-B:2, XI may be sentenced to a maximum term of  
 5 imprisonment of not more than 20 years, a fine of not more than \$300,000, or both. If any person  
 6 commits such a violation after one or more prior offenses, as defined in RSA 318-B:27, such person  
 7 may be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than  
 8 \$500,000, or both.

9 VIII. Any person who knowingly or purposely obtains or purchases (1) any substance which  
 10 he represents to be a controlled drug or controlled drug analog, or (2) any preparation containing a  
 11 substance which he represents to be a controlled drug or controlled drug analog, except as  
 12 authorized in this chapter, shall be guilty of a ~~[misdemeanor]~~ *violation*. If any person commits such  
 13 a violation after one or more prior offenses as defined in RSA 318-B:27, such person shall be guilty of  
 14 a class B ~~[felony]~~ *misdemeanor*.

15 IX. Any person who manufactures, sells, or dispenses methamphetamine, lysergic acid,  
 16 diethylamide phencyclidine (PCP) or any other controlled drug classified in schedules I or II, or any  
 17 controlled drug analog thereof, in violation of RSA 318-B:2, I or I-a, is strictly liable for a death  
 18 which results from the injection, inhalation or ingestion of that substance, and may be sentenced to  
 19 imprisonment for life or for such term as the court may order. For purposes of this section, the  
 20 person's act of manufacturing, dispensing, or selling a substance is the cause of a death when:

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

23 (b) The death was not:

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

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

33 ~~[IX-a. A qualifying patient or designated caregiver as defined in RSA 126 X:1 who sells~~  
 34 ~~cannabis to a person who is not a qualifying patient or a designated caregiver shall be guilty of a~~  
 35 ~~class B felony and shall be sentenced to a maximum term of imprisonment of not more than 7 years,~~  
 36 ~~a fine of not more than \$300,000, or both.]~~

1 X. Any penalty imposed for violation of this chapter shall be in addition to, and not in lieu of,  
2 any civil or administrative penalty or sanction authorized by law.

3 XI. Any person who violates any provision of this chapter for which a penalty is not provided  
4 by paragraphs I through IX shall be guilty of a class B felony ~~[if a natural person, or guilty of a~~  
5 ~~felony if any other person]~~ *misdemeanor, or guilty of a class B felony if the maximum penalty*  
6 *provided is a term of imprisonment in excess of 2 years.*

7 XII. The penalty categories set forth in this section based upon the weight of the drug  
8 involved are material elements of the offense; however, the culpability requirement shall not apply  
9 to that element of the offense.

10 XIII. ~~[Any person who violates any provision of this chapter shall be fined a minimum of~~  
11 ~~\$350 for a first offense and \$500 for a second or subsequent offense, except that any person who~~  
12 ~~violates the provisions of RSA 318-B:26, II(e) or RSA 318-B:26, II(d) shall be fined \$350. This~~  
13 ~~paragraph shall not apply to violations of RSA 318-B:2-e]~~ *Any person currently incarcerated for*  
14 *a conviction under this chapter may petition the court or the parole board for a reduction*  
15 *in sentence to the maximum sentence listed under this section.*

16 2 Use of Cannabis for Therapeutic Purposes; Prohibitions and Limitations.  
17 Amend RSA 126-X:3, VI to read as follows:

18 VI. Any qualifying patient or designated caregiver who sells cannabis to another person who  
19 is not a qualifying patient or designated caregiver under this chapter ~~[shall be subject to the~~  
20 ~~penalties specified in RSA 318-B:26, IX-a,]~~ shall have his or her registry identification card  
21 revoked[,] and shall be subject to ~~[either]~~ *the* penalties [as] provided in RSA 318-B:26.

22 3 Annulment of Criminal Offenses. Amend RSA 651:5, III(i) to read as follows:

23 (i) For a ~~[class A misdemeanor or felony]~~ *misdemeanor* offense under RSA 318-B:26, II,  
24 2 years.

25 4 Effective Date. This act shall take effect January 1, 2021.

HB 1614-FN- FISCAL NOTE  
AS INTRODUCED

AN ACT relative to the penalties for use or possession of a controlled drug.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

METHODOLOGY:

This bill reduces the charge level, fines and sanctions for various controlled drug violations. This bill affects penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$52	\$54
Class B Misdemeanor	\$54	\$56
Class A Misdemeanor	\$77	\$79
Simple Criminal Case	\$300	\$314
Routine Criminal Felony Case	\$484	\$498
Appeals	Varies	Varies

It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.

Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2019 Average Cost of Incarcerating an Individual	\$44,400	\$44,400
FY 2019 Annual Marginal Cost of a General Population Inmate	\$5,071	\$5,071
FY 2019 Average Cost of Supervising an Individual on Parole/Probation	\$576	\$576
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

The Judicial Council indicates this bill has a potential for a significant impact on indigent defense costs. Since the indigent defense system does not provide representation to defendants charged with class B misdemeanors, first-time possession charges would no longer require legal representation. In 2018, the Public Defender Program handled 2,877 straight possession cases. It is not possible to determine what percentage of these cases would be charged as class B misdemeanors under the proposed law.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. This bill would not impact the budget of the Department of Justice.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties