

Committee Report

CONSENT CALENDAR

March 24, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Ways and Means to which was referred HB 615-FN,

AN ACT reducing the penalty for certain first offense drug possession charges. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Alan Bershtein

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Ways and Means
Bill Number:	HB 615-FN
Title:	reducing the penalty for certain first offense drug possession charges.
Date:	March 24, 2021
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill passed the House by a voice vote on February 24, 2021. It was sent to the Ways and Means Committee for consideration of the fiscal impact of the portion of the bill prescribing reductions of certain fines. The scope of this bill is broader than simply reducing nominal fine amounts. However, as a second committee, Ways and Means confined its discussion to address only the fiscal aspect of the bill. The committee concluded that fine reductions detailed in this bill will be of *de minimis* fiscal consequence.

Vote 24-0.

Rep. Alan Bershtein
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Ways and Means

HB 615-FN, reducing the penalty for certain first offense drug possession charges. **OUGHT TO PASS.**

Rep. Alan Bershtein for Ways and Means. This bill passed the House by a voice vote on February 24, 2021. It was sent to the Ways and Means Committee for consideration of the fiscal impact of the portion of the bill prescribing reductions of certain fines. The scope of this bill is broader than simply reducing nominal fine amounts. However, as a second committee, Ways and Means confined its discussion to address only the fiscal aspect of the bill. The committee concluded that fine reductions detailed in this bill will be of *de minimis* fiscal consequence. **Vote 24-0.**

Voting Sheets

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on Bill # HB 615

BILL TITLE: reducing the penalty for certain first offense drug possession charges.

DATE: March 24, 2021

LOB ROOM: remote via Zoom

MOTION: (Please check one box)

OTP ITL Retain (1st year) Adoption of
Amendment # _____
 Interim Study (2nd year)

Moved by Rep. Bershtein Seconded by Rep. Almy Vote 24-0

MOTION: (Please check one box)

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

Moved by _____ Seconded by _____ Vote: _____

MOTION: (Please check one box)

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

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: YES NO n/a

Minority Report? Yes No If yes, author, Motion:

Alan Bershtein

Respectfully submitted: _____
Rep Alan Bershtein, Clerk



**STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK
2021 Session - Ways and Means**

Roll Call Committee Registers Report

reducing the penalty for certain first offense drug possession charges.

Bill #	HB 615-FN
Motion	OTP
Amendment #	
Exec Session Date	3/24/21
Consent Calendar?	Yes

Member	Motion / Seconded	Yea	Nay	NV
Patrick Abrami		X		
Lisa Post (for Mary Griffin)		X		
Jordan Ulery		X		
Russell Ober(R)		X		
Fred Doucette(R)		X		
Alan Bershtein(R)	Motion	X		
Robert Elliott(R)		X		
John Janigian(R)		X		
Hershel Nunez(R)		X		
Tim Baxter(R)		X		
Walter Spilsbury(R)		X		
Paul Tudor(R)		X		
Almy, Susan	Second	X		
Richard Ames(D)		X		
Thomas Southworth(D)		X		
Dennis Malloy(D)		X		
Thomas Schamberg(D)		X		
Edith Tucker(D)		X		
Jennie Gomarlo(D)		X		
Connie Lane (for Tom Loughman)		X		
Amanda Gourgue		X		
Mary Hakken-Phillips(D)		X		
James Murphy(D)		X		
Norman Major		X		
Total Vote		24		

Respectfully,
Rep. Alan Bershtein, Clerk

Public Hearing

House Committee on Ways and Means
Public Hearing on: HB 615-FN

Bill Title: reducing the penalty for certain first offense drug possession charges.

Date: March 10, 2021
LOB Room: remote via Zoom
Time Public Hearing Called to Order: 11:13 AM
Time Public Hearing Adjourned: 12:01 PM

Committee Members: Reps. Major, Abrami, Bershtein, M. Griffin, Ulery, R. Ober, Doucette, Elliott, Janigian, Nunez, Baxter, Spilsbury, Tudor, Almy, Ames, Southworth, Malloy, Schamberg, Tucker, Gomarolo, Loughman, Gourgue, Hakken-Phillips and Murphy

SPONSORS: Rep. Seaworth, Merr. 20; Rep. Verville, Rock. 2; Rep. Potucek, Rock. 6;
Rep. Conley, Straf. 13; Rep. Roy, Rock. 32; Sen. Reagan, Dist 17

TESTIMONY

Rep. Casey Conley, An Elected Official (supports bill)

- Introduced bill
- Reduces sentences and fines for first offense, non-violent offenses
- No felonies for first offense
- Lowers threshold to be charged with a felony for fentanyl.
- No significant impact on revenue collection resulting from reduced fines.
- Nothing about this bill relates to distribution of controlled substances. This bill only relates to possession.

Fowler, Ryan, Charlestown, NH, A Member of the Public (supports bill)

- Advocates for simplification of the law. This bill moves in the right direction.
- There is no evidence that treating this issue as a criminal issue instead of a healthcare issue is of any benefit. Prohibition does not work.

Naro, Anthony, Nashua, NH, NH Association of Criminal Defense Lawyers (Support)

- In the 1980s, Congress made a distinction between powder cocaine and crack cocaine. This disproportionately impacted poor populations.
- It is preferable to invest in treatment instead of investing in incarceration.
- "Mandatory fines should go away."

House Committee on Ways and Means
Public Hearing on: HB 615-FN

Bill Title: reducing the penalty for certain first offense drug possession charges.

Date: March 10, 2021
LOB Room: remote via Zoom
Time Public Hearing Called to Order: 11:13 AM
Time Public Hearing Adjourned: 12:01 PM

Committee Members: Reps. Major, Abrami, Bershtein, M. Griffin, Ulery, R. Ober, Doucette, Elliott, Janigian, Nunez, Baxter, Spilsbury, Tudor, Almy, Ames, Southworth, Malloy, Schamberg, Tucker, Gomarolo, Loughman, Gourgue, Hakken-Phillips and Murphy

Bryfonski, John, Bedford, NH, NH ASSOCIATION CHIEFS OF POLICE (Oppose)

- "This bill is flying under false colors." The quantities involved are drug trafficking quantities, not user quantities.
- This bill reduces sentencing for traffickers, which contradicts the testimony of the Rep that introduced the bill.
- These are not victimless crimes. Any death resulting from drug trafficking is not a victimless crime.

Honorable Joe Hannon, A Member of the Public (support)

- There is a growing body of evidence that longer prison sentences don't mean less crime.
- The cost of keeping people in jail for longer time frames should be considered.

Respectfully submitted,
Rep. Alan Bershtein, Clerk

House Remote Testify

Ways and Means Committee Testify List for Bill HB615 on 2021-03-10

Support: 45 Oppose: 5 Neutral: 1 Total to Testify: 4

[Export to Excel](#)

<u>Name</u>	<u>City, State Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Conley, Casey	Dover, NH caseymconley@gmail.com	An Elected Official	Myself/co-sponsor/Intro Bill	Support	Yes (5m)	3/9/2021 8:29 PM
Fowler, Ryan	Charlestown, NH rfowler@h2rc.org	A Member of the Public	Myself	Support	Yes (3m)	3/10/2021 7:02 AM
Naro, Anthony	Nashua, NH tony@bernazzanilaw.com	A Member of the Public	NH Association of Criminal Defense Lawyers	Support	Yes (3m)	3/4/2021 8:10 PM
Bryfonski, John	Bedford, NH jbryfonski@bedfordnh.org	A Member of the Public	NH ASSOCIATION CHIEFS OF POLICE	Oppose	Yes (3m)	3/9/2021 2:19 PM
Stockwell, Heather	Dublin, NH heather@radnh.org	A Lobbyist	Rights & Democracy NH	Support	No	3/9/2021 2:39 PM
Kelly, Fran	Amherst, NH Fr.kelly01@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 5:33 PM
Goldwater, Catherine	Milford, NH cathy.goldwater@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 3:53 PM
Casino, Joanne	Concord, NH joannecasino@comcast.net	A Member of the Public	Myself	Support	No	3/9/2021 4:05 PM
Trought, Elizabeth A	Dorchester, NH batrought@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 4:30 PM
bory, lee	nashua, NH leebory@juno.com	A Member of the Public	Myself	Support	No	3/9/2021 4:42 PM
Elliott, Judith	Canterbury, NH jelliottnh@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 4:47 PM
Davis, Sally	Thornton, NH sally.davis36@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 5:46 PM
Austin, Suzanne	Brentwood, NH suzanne321@comcast.net	A Member of the Public	Myself	Support	No	3/9/2021 6:10 PM

Fagin, Valerie	Rye, NH valeriefagin@comcast.net	A Member of the Public	Myself	Support	No	3/9/2021 6:29 PM
Grossi, Anne	BEDFORD, NH adgrossi7982@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 4:11 PM
Berger, LCMHC, Linda-Ruth	Concord, NH writeonlr@aol.com	A Member of the Public	Myself	Support	No	3/9/2021 5:15 PM
Seaworth, Brian	Pembroke, NH brian.seaworth@leg.state.nh.us	An Elected Official	Bill Sponsor	Support	No	3/9/2021 5:19 PM
Dahl, Dana	Milford, NH danaldahl@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 9:59 PM
Reynolds, Charles	Dover, NH reynolds.charles@comcast.net	A Member of the Public	Myself	Oppose	No	3/9/2021 7:14 PM
Heath, Ruth	Canterbury, NH ruthmheath@comcast.net	A Member of the Public	Myself	Support	No	3/9/2021 10:39 PM
Manjak, Molly	Manchester, NH mag239@wildcats.unh.edu	A Member of the Public	Myself	Support	No	3/5/2021 4:35 PM
Reaga, Senator John	Deerfield, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 17	Support	No	3/7/2021 8:45 AM
Hruska, Jeanne	Concord, NH Jeanne@aclu-nh.org	A Lobbyist	ACLU-NH	Support	No	3/7/2021 4:44 PM
Howland, Curt	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	3/7/2021 8:29 PM
Underwood, Jody	CROYDON, NH jodysun@gmail.com	An Elected Official	Myself	Support	No	3/8/2021 7:19 AM
Russo, Steven	Steven Russo, Keene, NH, NH srusso@ci.keene.nh.us	A Member of the Public	Myself	Oppose	No	3/8/2021 3:15 PM
Roy, Terry	Deerfield, NH terry.roy@leg.state.nh.us	An Elected Official	Myself	Support	No	3/8/2021 1:43 PM
Baranes, Sarah	Hanover, NH sarah.m.baranes.med@dartmouth.edu	A Member of the Public	Myself	Support	No	3/9/2021 1:59 AM
Connolly, Ross	Merrimack, NH rconnolly@afphq.org	A Lobbyist	Americans for Prosperity New Hampshire	Support	No	3/9/2021 10:20 AM
Rich, Martha	Enfield, NH martha.rich@thet.net	A Member of the Public	Myself	Support	No	3/9/2021 10:55 AM
Covert, Susan	Contoocook, NH scovert@comcast.net	A Member of the Public	Myself	Support	No	3/9/2021 3:44 PM

Oxenham, Evan	Plainfield, NH evan.oxenham@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 3:44 PM
Arabas, Jill	Hollis, NH Jaarabas@yahoo.com	A Member of the Public	Myself	Support	No	3/9/2021 3:49 PM
Perry, Brenda	Amherst, NH Bmperry65@msn.com	A Member of the Public	Myself	Support	No	3/9/2021 3:51 PM
Hope, Lucinda	Tilton, NH lmhope46@gmail.com	A Member of the Public	Myself	Oppose	No	3/9/2021 12:22 PM
Boutin, Kathryn	Newport, NH kathryn.e.boutin@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 12:41 PM
Jachim, Nancy	Newport, NH nancyjachim@gmail.com	A Member of the Public	Myself	Support	No	3/10/2021 7:23 AM
Wright, Betty	Exeter, NH Jeaneewright2021@gmail.com	A Member of the Public	Myself	Support	No	3/10/2021 7:27 AM
Bushueff, Catherine	Sunapee, NH agawamdesigns@gmail.com	A Member of the Public	Myself	Support	No	3/10/2021 7:28 AM
Potucek, John	Derry, NH potucek1@comcast.net	An Elected Official	Myself	Support	No	3/3/2021 12:43 PM
Atkinson, Matthew	Keene, NH mtthwatkinson@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 8:33 PM
Smith, Megan	Keene, NH msmith@antioch.edu	A Member of the Public	Myself	Support	No	3/9/2021 8:34 PM
Anastasia, Patricia	Londonderry, NH patti.anastasia@gmail.com	A Member of the Public	Myself	Support	No	3/9/2021 8:44 PM
Howe, Jana	Merrimack, NH Janahowedy@comcast.net	A Member of the Public	Myself	Support	No	3/9/2021 8:50 PM
Blair, David	Dublin, NH orionblair@gmail.com	A Member of the Public	Myself	Support	No	3/10/2021 12:06 AM
Brookmeyer, Janet	Grantham, NH brookmeyermusic@gmail.com	A Member of the Public	Myself	Support	No	3/10/2021 6:18 AM
Morris, Polly	Winchester, NH pollymorris39@gmail.com	A Member of the Public	Myself	Support	No	3/10/2021 7:45 AM
Valiquet, Jim	Newbury, NH jimvaliquet@gmail.com	A Member of the Public	Myself	Oppose	No	3/9/2021 11:17 PM
Elhuni, Asma	Lebanon, NH asma@radnh.org	A Lobbyist	Myself	Support	No	3/10/2021 3:37 AM

Huse, Chris	Concord, NH christopher.huse@dos.nh.gov	State Agency Staff	Department of Safety	Neutral	No	3/10/2021 6:44 AM
Dewey, Karen	Newport, NH pkdewey@comcast.net	A Member of the Public	Myself	Support	No	3/10/2021 6:59 AM

Testimony

Archived: Friday, March 12, 2021 3:49:08 PM

From: Ryan Fowler

Sent: Wednesday, March 10, 2021 7:35:54 AM

To: ~House Ways & Means Committee

Subject: HB615

Importance: Normal

Attachments:

[HB615 Letter Ryan Fowler.pdf](#) 

Hello and good morning, House Ways and Means Committee.

Thank you for your service to our great state.

Please review the attached letter I wrote in support of HB615. (AN ACT reducing the penalty for certain first offense drug possession charges.)

Please consider supporting this bill to reduce criminal penalties for drug possession. We know the war on drugs has failed. This bill is a way to make history, save money, and save lives. All research, science, and empirical evidence support moving away from a criminal model to address drug use. This bill is a big step in the right direction.

Again, thank you for your service and consideration. Have a great day.

Ryan Fowler, CRSW
Harm Reduction Coordinator
HIV HCV Resource Center
The Claremont Exchange
603-276-9698

Archived: Friday, March 12, 2021 3:49:07 PM
From: [Jeanne Hruska](#)
Sent: Thursday, March 11, 2021 9:12:00 AM
To: ~House Ways & Means Committee
Subject: ACLU-NH statement in support of HB615
Importance: Normal
Attachments:
HB615 - ACLU-NH statement - 031021.pdf ;



Dear Representatives,

I was sorry to miss the hearing yesterday on HB615. I'm writing now to share the ACLU-NH support for this bill and provide written testimony. The ACLU-NH championed the two 2020 bills that make up this current bill, and which both passed the House last year on voice vote. Both bills were unfortunately sidelined in the Senate due to COVID-19. HB615 is an opportunity to continue the House's bipartisan commitment to criminal legal reform and to reduce the burden on tax payers from mass incarceration. We respectfully urge this committee to vote *ought to pass* on HB615.

Thank you for your time and consideration.

Kind regards,
Jeanne

Jeanne Hruska
Pronouns: she, hers

Political Director
American Civil Liberties Union of New Hampshire
18 Low Avenue, Concord, NH 03301
(c) 307-272-8727 | jeanne@aclu-nh.org
aclu-nh.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

Archived: Friday, March 12, 2021 3:49:09 PM
From: John Bryfonski
Sent: Tuesday, March 9, 2021 4:26:30 PM
To: ~House Ways & Means Committee
Cc: Elizabeth C. Sargent
Subject: FW: HB 615 Testimony - NH Association of Chiefs of Police
Importance: Normal
Attachments:
HB 615 TESTIMONY OF NH ASSOC CHIEFS OF POLICE.docx ;

Good Afternoon: Please accept the attached testimony of the NH Association of Chiefs of Police relative to HB 615 to which, the Association is OPPOSED.

Thanks in advance for accepting our testimony and information on this important piece of legislation.

John J. Bryfonski
Chief of Police
55 Constitution Drive
Bedford, NH 03110
Office: 603-792-1330
Cell: 603-657-8826



Statement of Confidentiality

The information contained in this electronic message, and any attachments to this message, may contain confidential or privileged information and is intended for the exclusive use of the addressee(s). If you have received this message in error, please contact the sender immediately and delete this electronic message and any attachments from your system. Thank you for your cooperation.

Bill as
Introduced

HB 615-FN - AS INTRODUCED

2021 SESSION

21-0189

04/06

HOUSE BILL **615-FN**

AN ACT reducing the penalty for certain first offense drug possession charges.

SPONSORS: Rep. Seaworth, Merr. 20; Rep. Verville, Rock. 2; Rep. Potucek, Rock. 6; Rep. Conley, Straf. 13; Rep. Roy, Rock. 32; Sen. Reagan, Dist 17

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill reduces the penalty for certain first offense drug 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 One

AN ACT reducing the penalty for certain first offense drug possession charges.

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, I to read as follows:

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

9 (a) In the case of a violation involving any of the following, a person shall be sentenced
10 to a maximum term of imprisonment of not more than ~~[30]~~ **20** years, a fine of not more than
11 ~~[\$500,000]~~ **\$300,000**, or both. If any person commits such a violation after one or more prior offenses
12 as defined in RSA 318-B:27, such person may be sentenced to a maximum term of life imprisonment,
13 a fine of not more than ~~[\$500,000]~~ **\$350,000**, or both:

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

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

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

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

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

24 (3) Heroin or its analog~~[s]~~ **or** crack cocaine, ~~[or a fentanyl class drug]~~ in a quantity of
25 5 grams or more, including any adulterants or dilutants.

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

28 (5) ***A fentanyl class drug in a quantity of .5 gram, or more, including any***
29 ***adulterants or dilutants.***

30 (b) In the case of a violation involving any of the following, a person may be sentenced to
31 a maximum term of imprisonment of not more than ~~[20]~~ **15** years, a fine of not more than ~~[\$300,000]~~

1 **\$100,000**, or both. If any person commits such a violation after one or more prior offenses as defined
2 in RSA 318-B:27, such person may be sentenced to a term of imprisonment of not more than [40] **30**
3 years, a fine of not more than [~~\$500,000~~] **\$150,000**, or both:

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

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

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

13 (4) Heroin or its analog^[7] **or** crack cocaine, [~~or a fentanyl class drug~~] in a quantity of
14 one gram or more, including any adulterants or dilutants;

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

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

19 (7) Flunitrazepam in a quantity of 500 milligrams or more;

20 (8) ***A fentanyl class drug in a quantity of .25 gram or more, including any***
21 ***adulterants or dilutants.***

22 (c) In the case of a violation involving any of the following, a person may be sentenced to
23 a maximum term of imprisonment of not more than [7] **5** years, a fine of not more than [~~\$100,000~~]
24 **\$50,000**, or both. If any person commits such a violation after one or more prior offenses as defined
25 in RSA 318-B:27, such person may be sentenced to a maximum term of imprisonment of not more
26 than [~~15~~] **10** years, a fine of not more than [~~\$200,000~~] **\$100,000**, or both:

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

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

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

34 (4) Heroin or its analog^[7] **or** crack cocaine, [~~or a fentanyl class drug~~] in a quantity of
35 less than one gram, including any adulterants or dilutants;

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

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

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

4 (8) *A fentanyl class drug in a quantity of less than .25 gram, including any*
5 *adulterants or dilutants.*

6 (d) In the case of a violation involving any of the following, a person may be sentenced to
7 a maximum term of imprisonment of not more than 3 years, a fine of not more than [~~\$25,000~~]
8 **\$15,000**, or both. If any person commits such a violation after one or more prior offenses as defined
9 in RSA 318-B:27, such person may be sentenced to a maximum term of imprisonment of not more
10 than [~~6~~] **5** years, a fine of not more than [~~\$50,000~~] **\$30,000**, or both:

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

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

14 2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(a) to read as follows:

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

25 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, V-VIII to read as follows:

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

35 VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318-B:2,
36 XII as a drug enterprise leader [~~shall~~] *may* be sentenced to [~~a mandatory minimum term of not less~~
37 ~~than 25 years and may be sentenced to~~] *an extended term of imprisonment which may include*

HB 615-FN - AS INTRODUCED

- Page 4 -

1 a maximum term of not more than life imprisonment. The court may also impose a fine not to
2 exceed \$500,000 or 5 times the street value of the controlled drug or controlled drug analog involved,
3 whichever is greater. [~~Upon conviction, the court shall impose the mandatory sentence unless the~~
4 ~~defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the~~
5 ~~defendant and the state have entered into a post-conviction agreement which provides for a lesser~~
6 ~~sentence. The negotiated plea or post-conviction agreement may provide for a specified term of~~
7 ~~imprisonment within the range of ordinary or extended sentences authorized by law, a specified fine,~~
8 ~~or other disposition. In that event, the court at sentencing shall not impose a lesser term of~~
9 ~~imprisonment or fine than that expressly provided for under the terms of the plea or post-conviction~~
10 ~~agreement.]~~

11 VII. Any person who violates RSA 318-B:2, XI may be sentenced to a maximum term of
12 imprisonment of not more than [20] **15** years, a fine of not more than [~~\$300,000~~] **\$15,000**, or both. If
13 any person commits such a violation after one or more prior offenses, as defined in RSA 318-B:27,
14 such person may be sentenced to a term of imprisonment of not more than [40] **30** years, a fine of not
15 more than \$500,000, or both.

16 VIII. Any person who knowingly or purposely obtains or purchases (1) any substance which
17 he *or she* represents to be a controlled drug or controlled drug analog, or (2) any preparation
18 containing a substance which he *or she* represents to be a controlled drug or controlled drug analog,
19 except as authorized in this chapter, shall be guilty of a misdemeanor. If any person commits such a
20 violation after one or more prior offenses as defined in RSA 318-B:27, such person shall be guilty of a
21 class B felony.

22 4 Repeal. RSA 318-B:26, II(b), relative to maximum sentences for certain drug violations, is
23 repealed.

24 5 Effective Date. This act shall take effect January 1, 2022.

**HB 615-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT reducing the penalty for certain first offense drug possession charges.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<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 penalty for certain first offense drug offenses. The Judicial Branch provided the following analysis of the bill:

- By converting the crime from a felony to a misdemeanor, the cases would be tried in the Circuit Court unless a transfer to Superior Court is granted. Defendants convicted of a Class A misdemeanor in Circuit Court are entitled to a de novo jury trial in the Superior Court.
- Given the fines and penalty assessments collected in 2019 and 2020, it is not expected that the proposed change in fines would substantively impact revenues.
- If the bill becomes law, it will burden Circuit Court resources with the shift in cases from felonies tried in the Superior Court to misdemeanors tried in the Circuit Court, but will remove some of those cases from the Superior Court. It is not known how many of Class A misdemeanor convictions in the Circuit Court would be tried de novo in the Superior Court following a conviction in Circuit Court.
- The cost per misdemeanor case in Circuit Court is generally less than the cost per felony case in the Superior Court. The data on costs for routine criminal cases available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times that are more than fifteen years old so the data does not have current validity. The

Judicial Branch received authority to update this cost data in 2020, but due to the COVID state of emergency, the Branch has been unable to complete that analysis.

- The Branch is unable to determine the fiscal impact of lowering the maximum fines on cases subject to sentencing under RSA 318-B:26, I, VII or VIII.

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many 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 below have provided the potential costs associated with these penalties below.

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 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

The Department of Justice would not necessarily be involved in the prosecution of such offenses, the majority of which would be handled by municipal prosecutors and the county attorneys. Appeals from any convictions from any such offenses would be handled by the Criminal Justice Bureau and could be done within the current budget. To the extent the Department of Justice is involved with the prosecution of such offenses, the Department does not anticipate any financial impact. The Attorney General’s Drug Task Force investigates street-level crimes that sometimes

involve the sale and possession of controlled drugs, including marijuana. If this bill were to pass, the task force's efforts may be redirected. The Department does not anticipate savings to the task force would result from this bill.

AGENCIES CONTACTED:

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

Committee Report

REGULAR CALENDAR

January 27, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Criminal Justice and Public Safety
to which was referred HB 615-FN,**

**AN ACT reducing the penalty for certain first offense
drug possession charges. Having considered the same,
report the same with the following amendment, and the
recommendation that the bill OUGHT TO PASS WITH
AMENDMENT.**

Rep. Casey Conley

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 615-FN
Title:	reducing the penalty for certain first offense drug possession charges.
Date:	January 27, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2021-0124h

STATEMENT OF INTENT

This bill contains four elements that reflect modern practice and policy consensus on drug sentencing. It reduces maximum penalties for non-violent drug offenses, eliminates felony charges for a first-time personal possession charge and eliminates mandatory minimum sentences for drug infractions. It increases penalties for certain fentanyl offenses to reflect the potentially deadly effects of very small quantities. The provisions in HB 615 previously passed the House on a voice vote in two separate bills in 2020. The Senate failed to take up either bill due to COVID-19. The majority of the committee considers this good public policy and recommends passage of this bill.

Vote 15-6.

Rep. Casey Conley
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 615-FN, reducing the penalty for certain first offense drug possession charges. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Casey Conley for Criminal Justice and Public Safety. This bill contains four elements that reflect modern practice and policy consensus on drug sentencing. It reduces maximum penalties for non-violent drug offenses, eliminates felony charges for a first-time personal possession charge and eliminates mandatory minimum sentences for drug infractions. It increases penalties for certain fentanyl offenses to reflect the potentially deadly effects of very small quantities. The provisions in HB 615 previously passed the House on a voice vote in two separate bills in 2020. The Senate failed to take up either bill due to COVID-19. The majority of the committee considers this good public policy and recommends passage of this bill. **Vote 15-6.**

Original: House Clerk
Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on Bill # 615

BILL TITLE: Reducing Penalty for certain first offense drug possession charge.
DATE: 1/27/2021

LOB ROOM: _____

MOTION: (Please check one box)

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

Moved by Rep. Corley Seconded by Rep. Wallace Vote: ~~2/2~~ 21/0

MOTION: (Please check one box)

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

Moved by Rep. Corley Seconded by Rep. Wallace Vote: 15/0

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: _____

CONSENT CALENDAR: _____ YES _____ NO

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

Respectfully submitted: _____
Rep. Jennifer Rhodes



2021 SESSION

Criminal Justice and Public Safety

Bill #: 615 Motion: Amend 2021-0124H AM #: _____ Exec Session Date: 1/27/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	✓		
Welch, David A. Vice Chairman	✓		
Burt, John A.	✓		
Hopper, Gary S.	✓		
Green, Dennis E.	✓		
Wallace, Scott	✓		
Testerman, Dave	✓		
True, Chris	✓		
Pratt, Kevin M.	✓		
Marston, Dick	✓		
Rhodes, Jennifer M. Clerk	✓		
Harriott-Gathright, Linda C.	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Bordenet, John	✓		
Meuse, David	✓		
Newman, Ray E.	✓		
Bouldin, Amanda C.	✓		
Conley, Casey M.	✓		
Klein-Knight, Nicole	✓		
Bradley, Amy	✓		



2021 SESSION

Criminal Justice and Public Safety

Bill #: 615 Motion: OTPA AM #: _____ Exec Session Date: 1/27/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	✓		
Welch, David A. Vice Chairman	✓		
Burt, John A.	✓		
Hopper, Gary S.		✓	
Green, Dennis E.		✓	
Wallace, Scott	✓		
Testerman, Dave		✓	
True, Chris	✓		
Pratt, Kevin M.		✓	
Marston, Dick		✓	
Rhodes, Jennifer M. Clerk		✓	
Harriott-Gathright, Linda C.	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Bordenet, John	✓		
Meuse, David	✓		
Newman, Ray E.	✓		
Bouldin, Amanda C.	✓		
Conley, Casey M.	✓		
Klein-Knight, Nicole	✓		
Bradley, Amy	✓		

15 6

Public Hearing

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB615 on 2021-01-27

Support: 29 Oppose: 2 Neutral: 0 Total to Testify: 6

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Feder, Marsha	marshafeder@gmail.com	A Member of the Public	Myself	Support	Yes (0m)	No	1/25/2021 10:17 AM
Seaworth, Brian	brian.seaworth@leg.state.nh.us	An Elected Official	Myself - Prime Sponsor	Support	Yes (0m)	No	1/21/2021 10:07 AM
Chipi, Joanna	jcyogaa@gmail.com	A Member of the Public	Myself	Support	Yes (0m)	No	1/26/2021 2:17 PM
Cooper, Katherine	Katherine@NHACDL.org	A Lobbyist	NH Association of Criminal Defense Lawyers	Oppose	Yes (0m)	No	1/26/2021 4:02 PM
BRYFONSKI, JOHN	JBRYFONSKI@BEDFORDNH.ORG	A Member of the Public	NH ASSOC OF CHIEFS OF POLICE	Oppose	Yes (0m)	No	1/27/2021 8:46 AM
Hruska, Jeanne	Jeanne@aclu-nh.org	A Lobbyist	ACLU-NH	Support	Yes (0m)	No	1/24/2021 11:35 AM
Nieuwejaar, Jeanne	jeanne.nieuwejaar@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2021 5:10 PM
Blumenthal, Jessica	jessablumenthal@icloud.com	A Member of the Public	Myself	Support	No	No	1/27/2021 9:52 AM
Hannon, Joe	joehannon4nh@gmail.com	A Member of the Public	New Hampshire Harm Reduction Coalition	Support	No	No	1/27/2021 10:10 AM
Beene, Holly	holly.beene@yahoo.com	A Member of the Public	Myself	Support	No	No	1/27/2021 10:35 AM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	A Member of the Public	Myself	Support	No	No	1/27/2021 10:42 AM
Mangipudi, Latha	Latha.Mangipudi@leg.state.nh.us	An Elected Official	Hills 35	Support	No	No	1/27/2021 11:02 AM
Kerouac, Natahlia	Natahliakerouac@gmail.com	A Member of the Public	Myself	Support	No	No	1/27/2021 1:12 PM
McWilliams, Rebecca	Rebecca.McWilliams@leg.state.nh.us	An Elected Official	Merrimack 27	Support	No	No	1/22/2021 11:40 AM
Pinto, Josie	josie@nhyouthmovement.org	A Lobbyist	New Hampshire Youth Movement	Support	No	No	1/22/2021 2:53 PM
Lynch, Chrisinda	cmmelynych@comcast.net	A Member of the Public	Myself	Support	No	No	1/23/2021 10:40 AM
Rathbun, Eric	ericrathbun@gmail.com	A Member of the Public	Myself	Support	No	No	1/26/2021 8:42 PM
Smith, Barbara	brbsmith@mac.com	A Member of the Public	Myself	Support	No	No	1/27/2021 8:13 AM
Lascaze, Joseph	jlascaze@comcast.net	A Member of the Public	Myself	Support	No	No	1/27/2021 8:50 AM

Cote, Emma	emmacote@comcast.net	A Member of the Public	Myself	Support	No	No	1/26/2021 2:36 PM
Connolly, Ross	rconnolly@afphq.org	A Lobbyist	Americans for Prosperity New Hampshire	Support	No	No	1/26/2021 3:12 PM
Potucek, John	potucek1@comcast.net	An Elected Official	Myself	Support	No	No	1/23/2021 4:47 PM
Kremer, Ben	bckremer1@sbcglobal.net	A Member of the Public	Myself	Support	No	No	1/25/2021 12:18 PM
Reagan, Senator John	kathryn.cummings@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/25/2021 1:53 PM
Yokela, Josh	josh.yokela@leg.state.nh.us	An Elected Official	Rockingham 33	Support	No	No	1/25/2021 2:17 PM
Roy, Terry	terry.roy@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/25/2021 2:22 PM
ploszaj, tom	tom.ploszaj@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/25/2021 9:52 PM
Mika, Jane	Janemika@mac.com	A Member of the Public	Myself	Support	No	No	1/25/2021 10:30 PM
Shelly, Elizabeth	mllecoeurpese@gmail.com	A Member of the Public	Myself	Support	No	No	1/26/2021 11:05 AM
Groetzinger, Tonda	groetzinger659@gmail.com	A Member of the Public	Myself	Support	No	No	1/26/2021 9:56 AM
Berry, Jake	jberry@new-futures.org	A Lobbyist	New Futures	Support	No	No	1/26/2021 1:05 PM

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 615-FN

BILL TITLE: reducing the penalty for certain first offense drug possession charges.

DATE: January 27, 2021

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:32 a.m.

Time Adjourned: 11:15 a.m.

Committee Members: Reps. Abbas, Welch, Rhodes, Burt, Hopper, Green, Wallace, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Klein-Knight and Bradley

Bill Sponsors:

Rep. Seaworth

Rep. Verville

Rep. Potucek

Rep. Conley

Rep. Roy

Sen. Reagan

TESTIMONY

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

Rep. Brian Seaworth

- Reasons as to why he introduced

Q: Rep. Marston – Does parole board get involved with this bill?

A: They would not do it diff

Q: Follow up – Isn't parole board job?

A: Not sure – not what bill is about

Q: Rep. Hopper – Fines for fentanyl are reduced even if person has enough to be considered “dealer”

A: True

Q: Rep. H. Gathright – Amount reduced for younger people – Should it be higher – thinks it was a mistake?

A: Not sure

Q: Follow up – Will you support changing if it was a mistake?

A: Yes – if it makes it better

Q: Rep. Bouldin – Will you arrange for that correction to be submitted today?

A: If chairman feels it is necessary

Dan May -Support

- 1st offence should be considered

Catherine Cooper – Support

- Wants fentanyl amounts to remain same

Q: Rep. Testerman 0 Difference between heroin and fentanyl amounts

A: The person “thinks” it is the same amount – fentanyl is more dangerous

Q: Rep. Connelly – Are the people not aware they are using fentanyl?

A: Person just wants a substance

Q: Follow up – Does increase penalty help people not do – or – buy drugs?

A: No, they don't mind or think of consequences

Q: Rep. Hopper – What is consequence for dealer?

A: Bill addresses possession – not dealer

Rep. Newman – Withdrawal

Q: Rep. True – What part of bill is she referring to in regard to fentanyl?

A: It is separated

Q: Rep. Abbas – Difference between buying something not knowing if it is illegal – what they were given

A: Intent was to buy illegal substance

Albert Buzzscheir

- Penalty affects life in negative ways – very counterproductive

Dr. Joe Hannan

- Users don't realize if they buy wrong substance or amounts

Respectfully submitted,

Rep. Jennifer Rhodes, Clerk

Testimony

Archived: Monday, February 15, 2021 10:26:45 AM

From: [Marsha Feder](#)

Sent: Monday, January 25, 2021 10:50:08 AM

To: [~House Criminal Justice and Public Safety](#)

Subject: HB 615

Importance: Normal

To the House Criminal Justice and Public Safety Committee:

I would like to speak in support of HB615 which would make first time personal drug possession a misdemeanor rather than a felony.

For twenty years, I was a high school special education teacher and so I am quite familiar with teenagers. Many of them demonstrate a lack of mature judgement and often act impulsively. My students often struggled with the challenges of learning and emotional difficulties as well as economic insecurity. There were several who were arrested on charges of possession and their lives rapidly spiraled downward. Court dates and then incarceration interrupted and then often ended their education. When they were released from prison, they were unable to find employment because of their criminal record. So these young people at age 19 or 20 had no high school diploma, no job opportunities, and no health insurance because of a mistake that did not injure anyone. It is time for NH to reform our drug statutes. This would make a big difference in the lives of many Granite Staters.

Thank you

Marsha Feder

Hollis

Archived: Monday, February 15, 2021 10:26:45 AM
From: [Norman J Silber](#)
Sent: Wednesday, January 27, 2021 9:23:41 PM
To: ~House Criminal Justice and Public Safety
Cc: a.beanburpee@gilfordpd.org
Subject: HB 615
Importance: Normal

Dear Colleagues:

I write on behalf of my constituent, Gilford Police Chief Anthony Bean Burpee, in his capacity as such chief, as well as his position as President of, and spokesman for, the NH Association of Chiefs of Police (NHACOP).

Chief Bean Burpee, as well as the NH Association of Chiefs of Police, strongly oppose HB 615.

It is my understanding that Bedford Police Chief John Bryfonski (who spent over 25 years with the DEA) attempted to testify in opposition to the bill on behalf of the NHACOP today (Jan 27) and had properly signed-up to speak; however, was never called upon to do so. Additionally, he and the lobbyist for the NHACOP, who had both been attending via Zoom, raised their “virtual hand” to speak but were never called upon. As I understand it, there were significant technical difficulties that sidelined most of the hearing and testimony on this bill.

That being said, while it certainly would be appropriate for another public hearing on the bill to be held so that those who were not able to speak can do so, I take this opportunity to present certain of the facts and issues as to which they would have testified, as follows:

- In 2019, the Police Department of our small town of Gilford handled 302 combined calls for service related to assaults, burglaries, thefts, criminal mischief and stand-alone drug offenses. In 2020, there were 297 calls for service for the same crimes. Of those cases each year, over 60% of them involved a drug-related component once investigations were completed and charges filed against suspects. As you know, this country is dealing with a drug epidemic related to both prescription and illicit drug possession and use. NH is not immune and, more locally, neither is Belknap County nor Gilford.**
- If passed and becoming a law, HB 615 will reduce the penalties universally used against drug traffickers and not simply drug users.**
- The controlled drugs identified in HB 615 have no good effect upon society other than to cause death, harm, destruction and collateral damage to children, youth and families.**
- None of the controlled drugs covered in HB 615 have any valid medical use with perhaps the possible exception of pharmaceutical grade fentanyl sometimes used in anesthesia.**
- By reducing the penalties used to charge drug traffickers, who typically are not drug users, we will be sending the wrong message to drug**

traffickers whose only aim is to make money while destroying the lives of others.

- **By reducing some controlled drug possession charges to misdemeanors another wrong message will be sent to lower tier traffickers who may be users but nevertheless sell destructive drugs to others.**
- **Reducing some controlled drug possession charges to misdemeanors will obliterate the leverage county attorneys and the judiciary have to incentivize users into treatment. moreover, changing the penalty scheme will induce larger scale traffickers simply to limit the amount they could be caught with in order to avoid jail time.**
- **In today's reality, very few people go to jail for drug possession charges even after multiple arrests for drug possession and other crimes committed to support their addiction.**
- **But reducing the penalties from potential felony level crimes to misdemeanor level crimes guarantees the leverage, as short as it may be now, used by county attorneys and the judiciary is all but eliminated. Eliminating mandatory minimum sentencing further jettisons the leverage used to prevent, discourage, and penalize large scale drug trafficking in NH, and to sentence appropriately and to hold accountable those who may have been responsible for the deaths of many granite staters.**
- **HB 615 is soft on drug crime which has not gone away.**
- **Last year more than 390 people in NH died from drug overdoses; the year before 415, which is still 250% higher than at the beginning of the drug epidemic in 2012 when 163 overdose deaths occurred.**
- **Strong drug penalties used against drug traffickers sends the message that NH will not tolerate drug trafficking in our state.**
- **But reducing penalties used against traffickers is just not the commonsense approach to dealing with criminals whose only purpose is to make money by selling poison that destroys lives, families and harms our economy and future.**

Thus, I respectfully urge you to find HB 615 Inexpedient To Legislate.

Thank you for your consideration and please be kind enough to let me know if HB 615 will be re-set for another attempt at a public hearing.

Norm Silber

Member of the New Hampshire House of Representatives

Belknap County District 2- Gilford & Meredith

Chair, Belknap County Republican Committee

Member of the New Hampshire Bar & The Florida Bar

243 Mountain Drive

Gilford, New Hampshire 03249-6764

Tel 603-293-0565

Cell 305-803-5400

Email: njs@silbersnh.com

View complete profile: www.linkedin.com/in/norman-j-norm-silber-83269522

"Live free or die: Death is not the worst of evils."

General [John Stark](#), hero of the [American Revolutionary War](#)

Archived: Monday, February 15, 2021 10:26:45 AM

From: Brian Seaworth

Sent: Tuesday, January 26, 2021 6:08:41 PM

To: ~House Criminal Justice and Public Safety

Subject: Additional info: HB 615 - Reducing the penalty for certain first offense drug possession charges.

Importance: Normal

Chairman Abbas and Members of the Committee,

Tomorrow morning I expect to be introducing HB 615 to your committee. This bill combines the language of two bills from the 2020 session. It may be helpful to you to have a written reference to these earlier versions.

The language for HB 615 is taken directly from HB 1625 and HB 1641, as passed by the House. Both bills were addressed in the February 20th, 2020 House session (House Calendar 7 - http://www.gencourt.state.nh.us/house/caljournals/calendars/2020/HC_7.pdf), when they were approved on a voice vote. The bills died on the table in the Senate, without any further action.

I hope you find this information helpful and look forward to addressing your committee tomorrow morning.

Rep. Brian Seaworth

Pembroke and Chichester

Archived: Thursday, May 6, 2021 3:36:45 PM
From: Terry Roy
Sent: Wednesday, March 24, 2021 1:03:51 PM
To: ~House Ways & Means Committee
Subject: HB615-FN
Importance: Normal

Dear Chairman Major and Honorable Members of the Committee,

I write to express my support for HB615 that I understand is under your consideration. The policy issues of this bill have been flushed out previously in the Criminal Justice Committee in an in-depth and thoughtful manner. I hope that your committee finds the financial aspects of it, if any, acceptable and report it out as Ought to Pass.

Briefly, I cosponsored this bill based on my experience in law enforcement and careful study of the issues currently facing the State. This bill does not in any way change the position of the State to be hard on drug dealers, a concept that I could never support. It does however take into account the current substances effecting our citizens, rates of recidivism, opportunity for rehabilitation and cost of incarceration. I actually amended this bill last session to its current form after conferring with State and local law enforcement. In that amendment INCREASED the penalties for possession of fentanyl in much lower quantities which is currently THE most dangerous substance facing law enforcement and our citizens.

In closing, I thank you for your time and consideration of this important issue and urge you to pass this piece of important legislation. Please feel free to reach out to me with any questions you may have.

Best,

Terry

HON. TERRY W. ROY
NEW HAMPSHIRE HOUSE OF REPRESENTATIVES
ROCKINGHAM DIST. 32
VICE CHAIR
COMMITTEE FOR EXECUTIVE DEPARTMENTS AND ADMINISTRATION





Archived: Monday, February 15, 2021 10:26:45 AM
From: [Jeanne Hruska](#)
Sent: Tuesday, January 26, 2021 1:50:46 PM
To: ~House Criminal Justice and Public Safety
Subject: ACLU-NH Testimony in support of HB615
Importance: Normal
Attachments:
HB615 - Drug sentencing reform - HOUSE - 012721.pdf ;

Dear Representatives,

I look forward to testifying in support of HB615 tomorrow. In anticipation of the hearing, I am sending you my written testimony in support of the legislation. Thank you for your time and consideration.

Kind regards,
Jeanne

Jeanne Hruska
Pronouns: she, hers

Political Director
American Civil Liberties Union of New Hampshire
18 Low Avenue, Concord, NH 03301
(e) 307-272-8727 | jeanne@aclu-nh.org
aclu-nh.org  



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

Archived: Monday, February 15, 2021 10:26:45 AM
From: John Bryfonski
Sent: Wednesday, January 27, 2021 9:36:23 AM
To: ~House Criminal Justice and Public Safety
Subject: HB 615 TESTIMONY NH ASSOCIATION OF CHIEFS OF POLICE
Importance: Normal
Attachments:
HB 615 TESTIMONY OF NH ASSOC CHIEFS OF POLICE.docx ;

Good Morning: Please accept this testimony from the NH Association of Chiefs of Police regarding HB 615.

John J. Bryfonski
Chief of Police
55 Constitution Drive
Bedford, NH 03110
Office: 603-792-1330
Cell: 603-657-8826



Statement of Confidentiality

The information contained in this electronic message, and any attachments to this message, may contain confidential or privileged information and is intended for the exclusive use of the addressee(s). If you have received this message in error, please contact the sender immediately and delete this electronic message and any attachments from your system. Thank you for your cooperation.

Bill as
Introduced

HB 615-FN - AS INTRODUCED

2021 SESSION

21-0189

04/06

HOUSE BILL **615-FN**

AN ACT reducing the penalty for certain first offense drug possession charges.

SPONSORS: Rep. Seaworth, Merr. 20; Rep. Verville, Rock. 2; Rep. Potucek, Rock. 6; Rep. Conley, Straf. 13; Rep. Roy, Rock. 32; Sen. Reagan, Dist 17

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill reduces the penalty for certain first offense drug 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 One

AN ACT reducing the penalty for certain first offense drug possession charges.

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, I to read as follows:

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

9 (a) In the case of a violation involving any of the following, a person shall be sentenced
10 to a maximum term of imprisonment of not more than ~~[30]~~ **20** years, a fine of not more than
11 ~~[\$500,000]~~ **\$300,000**, or both. If any person commits such a violation after one or more prior offenses
12 as defined in RSA 318-B:27, such person may be sentenced to a maximum term of life imprisonment,
13 a fine of not more than ~~[\$500,000]~~ **\$350,000**, or both:

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

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

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

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

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

24 (3) Heroin or its analog~~[s]~~ **or** crack cocaine, ~~[or a fentanyl class drug]~~ in a quantity of
25 5 grams or more, including any adulterants or dilutants.

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

28 **(5) A fentanyl class drug in a quantity of .5 gram, or more, including any**
29 **adulterants or dilutants.**

30 (b) In the case of a violation involving any of the following, a person may be sentenced to
31 a maximum term of imprisonment of not more than ~~[20]~~ **15** years, a fine of not more than ~~[\$300,000]~~

1 **\$100,000**, or both. If any person commits such a violation after one or more prior offenses as defined
2 in RSA 318-B:27, such person may be sentenced to a term of imprisonment of not more than [40] **30**
3 years, a fine of not more than [~~\$500,000~~] **\$150,000**, or both:

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

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

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

13 (4) Heroin or its analog^[7] **or** crack cocaine, [~~or a fentanyl class drug~~] in a quantity of
14 one gram or more, including any adulterants or dilutants;

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

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

19 (7) Flunitrazepam in a quantity of 500 milligrams or more;

20 (8) ***A fentanyl class drug in a quantity of .25 gram or more, including any***
21 ***adulterants or dilutants.***

22 (c) In the case of a violation involving any of the following, a person may be sentenced to
23 a maximum term of imprisonment of not more than [7] **5** years, a fine of not more than [~~\$100,000~~]
24 **\$50,000**, or both. If any person commits such a violation after one or more prior offenses as defined
25 in RSA 318-B:27, such person may be sentenced to a maximum term of imprisonment of not more
26 than [~~15~~] **10** years, a fine of not more than [~~\$200,000~~] **\$100,000**, or both:

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

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

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

34 (4) Heroin or its analog^[7] **or** crack cocaine, [~~or a fentanyl class drug~~] in a quantity of
35 less than one gram, including any adulterants or dilutants;

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

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

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

4 (8) *A fentanyl class drug in a quantity of less than .25 gram, including any*
5 *adulterants or dilutants.*

6 (d) In the case of a violation involving any of the following, a person may be sentenced to
7 a maximum term of imprisonment of not more than 3 years, a fine of not more than [~~\$25,000~~]
8 **\$15,000**, or both. If any person commits such a violation after one or more prior offenses as defined
9 in RSA 318-B:27, such person may be sentenced to a maximum term of imprisonment of not more
10 than [~~6~~] **5** years, a fine of not more than [~~\$50,000~~] **\$30,000**, or both:

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

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

14 2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(a) to read as follows:

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

25 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, V-VIII to read as follows:

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

35 VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318-B:2,
36 XII as a drug enterprise leader [~~shall~~] *may* be sentenced to [~~a mandatory minimum term of not less~~
37 ~~than 25 years and may be sentenced to~~] *an extended term of imprisonment which may include*

HB 615-FN - AS INTRODUCED

- Page 4 -

1 a maximum term of not more than life imprisonment. The court may also impose a fine not to
2 exceed \$500,000 or 5 times the street value of the controlled drug or controlled drug analog involved,
3 whichever is greater. [~~Upon conviction, the court shall impose the mandatory sentence unless the~~
4 ~~defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the~~
5 ~~defendant and the state have entered into a post-conviction agreement which provides for a lesser~~
6 ~~sentence. The negotiated plea or post-conviction agreement may provide for a specified term of~~
7 ~~imprisonment within the range of ordinary or extended sentences authorized by law, a specified fine,~~
8 ~~or other disposition. In that event, the court at sentencing shall not impose a lesser term of~~
9 ~~imprisonment or fine than that expressly provided for under the terms of the plea or post-conviction~~
10 ~~agreement.]~~

11 VII. Any person who violates RSA 318-B:2, XI may be sentenced to a maximum term of
12 imprisonment of not more than [20] **15** years, a fine of not more than [~~\$300,000~~] **\$15,000**, or both. If
13 any person commits such a violation after one or more prior offenses, as defined in RSA 318-B:27,
14 such person may be sentenced to a term of imprisonment of not more than [40] **30** years, a fine of not
15 more than \$500,000, or both.

16 VIII. Any person who knowingly or purposely obtains or purchases (1) any substance which
17 he *or she* represents to be a controlled drug or controlled drug analog, or (2) any preparation
18 containing a substance which he *or she* represents to be a controlled drug or controlled drug analog,
19 except as authorized in this chapter, shall be guilty of a misdemeanor. If any person commits such a
20 violation after one or more prior offenses as defined in RSA 318-B:27, such person shall be guilty of a
21 class B felony.

22 4 Repeal. RSA 318-B:26, II(b), relative to maximum sentences for certain drug violations, is
23 repealed.

24 5 Effective Date. This act shall take effect January 1, 2022.

**HB 615-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT reducing the penalty for certain first offense drug possession charges.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<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 penalty for certain first offense drug offenses. The Judicial Branch provided the following analysis of the bill:

- By converting the crime from a felony to a misdemeanor, the cases would be tried in the Circuit Court unless a transfer to Superior Court is granted. Defendants convicted of a Class A misdemeanor in Circuit Court are entitled to a de novo jury trial in the Superior Court.
- Given the fines and penalty assessments collected in 2019 and 2020, it is not expected that the proposed change in fines would substantively impact revenues.
- If the bill becomes law, it will burden Circuit Court resources with the shift in cases from felonies tried in the Superior Court to misdemeanors tried in the Circuit Court, but will remove some of those cases from the Superior Court. It is not known how many of Class A misdemeanor convictions in the Circuit Court would be tried de novo in the Superior Court following a conviction in Circuit Court.
- The cost per misdemeanor case in Circuit Court is generally less than the cost per felony case in the Superior Court. The data on costs for routine criminal cases available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times that are more than fifteen years old so the data does not have current validity. The

Judicial Branch received authority to update this cost data in 2020, but due to the COVID state of emergency, the Branch has been unable to complete that analysis.

- The Branch is unable to determine the fiscal impact of lowering the maximum fines on cases subject to sentencing under RSA 318-B:26, I, VII or VIII.

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many 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 below have provided the potential costs associated with these penalties below.

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 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

The Department of Justice would not necessarily be involved in the prosecution of such offenses, the majority of which would be handled by municipal prosecutors and the county attorneys. Appeals from any convictions from any such offenses would be handled by the Criminal Justice Bureau and could be done within the current budget. To the extent the Department of Justice is involved with the prosecution of such offenses, the Department does not anticipate any financial impact. The Attorney General’s Drug Task Force investigates street-level crimes that sometimes

involve the sale and possession of controlled drugs, including marijuana. If this bill were to pass, the task force's efforts may be redirected. The Department does not anticipate savings to the task force would result from this bill.

AGENCIES CONTACTED:

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