

LEGISLATIVE COMMITTEE MINUTES

SB34

Bill as Introduced

SB 34-FN - AS INTRODUCED

2021 SESSION

21-0720
04/10

SENATE BILL

34-FN

AN ACT

relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.

SPONSORS:

Sen. D'Allesandro, Dist 20; Sen. Rosenwald, Dist 13; Sen. Giuda, Dist 2; Sen. Cavanaugh, Dist 16

COMMITTEE:

Health and Human Services

ANALYSIS

This bill inserts a new definition of controlled drug analog, inserts a prohibition on the sale or possession of synthetic urine and urine additives, and repeals obsolete statutes governing the sale of synthetic drugs.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.

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

1 1 Alcoholic Beverages; Suspension or Revocation. Amend RSA 179:57, I to read as follows:

2 I. The commission shall cause frequent inspections to be made of all the premises with
3 respect to which any license has been issued under the provisions of this title. If any license:

4 (a) Violates any of the provisions of law or any of the rules of the commission adopted
5 under this title; or

6 (b) Fails to superintend in person or through a manager approved by the commission
7 the business for which the license was issued; or

8 (c) Allows the premises with respect to which the license was issued to be used for any
9 unlawful purposes; or

10 (d) Knowingly designates to be in charge of the premises any person who has been
11 convicted of a felony, unless the person has been approved by the commission pursuant to RSA
12 179:23, V[5]; or

13 (e) Otherwise fails to carry out in good faith the purposes of this title or if the premises
14 are regularly the site of violence, the license of such licensee may be suspended or revoked after
15 notice and hearing, in accordance with RSA 541-A:31-36. Notwithstanding any other provisions of
16 this chapter, the commission after the appropriate hearing may impose a fine of a specific sum,
17 which shall not be less than \$100 nor more than \$5,000 for any one offense. Such a fine may be
18 imposed instead of, or in addition to, any suspension or revocation of a license by the commission.

19 2 Controlled Drug Act; Definition of Controlled Drug Analog. RSA 318-B:1, VI-a is repealed and
20 reenacted to read as follows:

21 VI-a.(a) "Controlled drug analog" means a substance, however constituted, the chemical
22 structure of which is derivative of, or substantially similar to that of a controlled drug and:

23 (1) Which has been shown in laboratory studies to bind with and activate the same
24 central nervous receptors that are responsible for the psychoactive effects of a certain controlled
25 drug or controlled drug class; or

26 (2) With respect to a particular person, which such person represents or intends to
27 have similar psychoactive effects on the central nervous system as a controlled drug.

28 (b) "Controlled drug analog" shall not include:

29 (1) A controlled drug;

30 (2) Any substance for which there is an approved new drug application;

1 (3) With respect to a particular person, any substance, if an exemption is in effect for
2 investigational use for that person under 21 U.S.C. section 355, to the extent conduct with respect to
3 the substance is pursuant to such an exemption; or

4 (4) Any compound, mixture, or preparation that contains any controlled drug or
5 controlled drug analog that is not for administration to a human being or animal, and that is
6 packaged in such a form or concentration, or with adulterants or denaturants so that, as packaged, it
7 does not present any significant potential for abuse.

8 3 New Paragraph; Controlled Drug Act; Definition of Substantially Similar in Chemical
9 Structure. Amend RSA 318-B:1 by inserting after paragraph XXXI the following new paragraph:

10 XXXI-a. "Substantially similar in chemical structure" means that the substance in question
11 shares a common core structure with a controlled drug, meaning that the "backbone" of the molecule
12 is the same, and has no more than 2 points of divergence (additions, deletions, or substitutions) from
13 the controlled drug, which may consist of a single atom or a functional group or some combination
14 thereof. Functional groups are further defined as alkyl, alkenyl, alkynyl, ring structures (either
15 homocyclic or heterocyclic, with or without additional attached functional groups), organic halides,
16 alkoxy, alcohol, ether, amine, aldehyde, ketone, carboxylic acid, ester, amide, nitrile, nitro, sulfide,
17 thiene, thioester, or thiol.

18 4 Sale of Synthetic Drugs. RSA 359-O is repealed and reenacted to read as follows:

19 CHAPTER 359-O

20 SALE OR POSSESSION OF

21 SYNTHETIC URINE AND URINE ADDITIVES

22 359-O:1 Sale or Possession of Synthetic Urine and Urine Additives Prohibited.

23 I. No person or business shall:

24 (a) Manufacture, sell, distribute, market, or possess synthetic urine or urine additives;

25 or

26 (b) Attempt to defeat a drug or alcohol screening test by using synthetic urine or urine
27 additives.

28 II. In this section, "drug or alcohol screening test" means an analysis of a sample of bodily
29 fluid collected from a person for the purpose of detecting the presence of alcohol or drugs in the
30 bodily fluid of the person.

31 III. Any person or business who violates this section shall be assessed a fine of \$500, plus
32 penalty assessment. Each day a violation occurs shall constitute a separate offense.

33 5 Repeal. The following are repealed:

34 I. RSA 143-A:9-b, relative to sale of a synthetic drug by a food service licensee.

35 II. RSA 179:63, relative to sale or distribution of a synthetic drug by an alcoholic beverage
36 licensee.

- 1 III. RSA 284:21-h, III-a, relative to the sale or distribution of a synthetic drug at a retail
- 2 establishment or sales location licensed to sell lottery tickets.
- 3 6 Effective Date. This act shall take effect 60 days after its passage.

LBA
21-0720
12/9/20

**SB 34-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation, as introduced, has a total fiscal impact of less than \$10,000 in each of the fiscal years 2021 through 2024.

AGENCIES CONTACTED:

None

Committee Minutes

SENATE CALENDAR NOTICE
Health and Human Services

Sen Jeb Bradley, Chair
Sen James Gray, Vice Chair
Sen Kevin Avar, Member
Sen Tom Sherman, Member
Sen Rebecca Whitley, Member

Date: January 13, 2021

HEARINGS

Wednesday	01/20/2021	
(Day)	(Date)	
Health and Human Services	REMOTE 000	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m.	SB 34-FN	relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.
1:15 p.m.	SB 45	relative to the controlled drug prescription health and safety program.
1:30 p.m.	SB 29	relative to the health risks associated with dispensing high-concentration marijuana in alternative treatment centers.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://zoom.us/j/99071603325>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: +13017158592,,99071603325# or +13126266799,,99071603325#
4. Webinar ID: 990 7160 3325
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 34-FN

Sen. D'Allesandro

Sen. Rosenwald

Sen. Giuda

Sen. Cavanaugh

SB 45

Sen. Giuda

Sen. Soucy

Sen. Carson

Sen. Prentiss

Rep. M. Pearson
SB 29
Sen. Giuda

Rep. Marsh
Sen. Carson

Rep. Merchant
Rep. M. Pearson

Rep. Weyler

Griffin Roberge 271-3042

Jeb Bradley
Chairman

Senate Health and Human Services Committee

Griffin Roberge 271-3042

SB 34-FN, relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.

Hearing Date: January 20, 2021.

Time Opened: 1:03 p.m.

Time Closed: 1:26 p.m.

Members of the Committee Present: Senators Bradley, Gray, Avard, Sherman and Whitley.

Members of the Committee Absent: None.

Bill Analysis: This bill inserts a new definition of controlled drug analog, inserts a prohibition on the sale or possession of synthetic urine and urine additives, and repeals obsolete statutes governing the sale of synthetic drugs.

Sponsors:

Sen. D'Allesandro

Sen. Rosenwald

Sen. Giuda

Sen. Cavanaugh

Who supports the bill: Senator Lou D'Allesandro, NH Senate District 20; Senator Cindy Rosenwald, NH Senate District 13; Senator Bob Giuda, NH Senate District 2; Melisa Staples, NH Department of Safety; Robert Oxley, NH Department of Corrections; Elizabeth Sargent, NH Association of Chiefs of Police; Kathryn Frey, New Futures.

Who opposes the bill: John Light, Manchester, NH; Alvin See.

Who is neutral on the bill: Aidan Moore, NH Liquor Commission.

Summary of testimony presented in support:

Senator Lou D'Allesandro

NH Senate District 20

- SB 34-FN is a reintroduction of SB 709-FN (2020). While SB 709-FN passed the Senate, the bill was tabled in the House due to the suspension of legislative activity as a result of the COVID-19 pandemic.
- SB 34-FN came at the request of the NH Department of Safety (NHDOS) and former Manchester police chief David Mara.
- SB 34-FN does three things:
 - Inserts a new definition of controlled drug analog.
 - Inserts a prohibition on the sale or possession of synthetic urine and urine additives.
 - Repeals obsolete statutes governing the sale of synthetic drugs.
- Senator D'Alledandro deferred to the NHDOS and others to speak to the specifics of SB 34-FN, but the purpose of SB 34-FN is to give law enforcement the tools they need to combat synthetic drugs.

Melissa W. Staples - provided written testimony

Laboratory Director, NH State Police Forensic Laboratory, NHDOS

- Back in 2014, NH faced an emergency with drug analogs like spice. Governor Maggie Hassan declared a state of emergency due to the rise of overdoses. Legislation was put into place to quell the distribution of

these drugs. However, drug analogs such as bath salts are becoming more prevalent in NH, especially in western NH. This is causing medical emergencies and an increase in crime.

- Current state statute does not support the prosecution of controlled drug analogs. RSA 318-B:1, VI-a defines a "controlled drug analog" as *a substance that has a chemical structure substantially similar to that of a controlled drug and that was specifically designed to produce an effect substantially similar to that of a controlled drug. The term shall not include a drug manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug and Cosmetic Act, 52 Stat. 1052 (21 U.S.C. 355).*
- There are two problems with the definition of a "controlled drug analog" under RSA 318-B:1, VI-a:
 - The phrase "substantially similar" is not defined. Prosecutors lack a clear standard for guidance.
 - The phrase "specifically designed to produce an effect..." would require prosecution to know what the person who manufactured the drug was thinking, what the manufacturer's intent was, and when the manufacturer produced the drug. This is nearly impossible for prosecutors to prove.
- SB 34-FN changes the "controlled drug analog" definition in Sections 2 and 3 from page 1, lines 19-30 to page 2, line 17. The new definition provides prosecutors the ability to produce laboratory results which show that an analog has the same psychoactive effects of a certain controlled drug or controlled drug class. The Drug Enforcement Administration (DEA) can produce these studies quickly, which can demonstrate the effect scientifically rather than relying on a person's intended effect.
- Section 4 repeals and reenacts RSA 359-O. Currently, RSA 359-O was intended to prohibit the sale of synthetic drugs like spice in retail establishments. RSA 359-O was successful in getting synthetic drugs out of retail establishments, but when synthetic drugs went onto the black market, state statute could not be effectively enforced. The new definition of "controlled drug analog" under SB 34-FN makes RSA 359-O obsolete as sales in retail establishments could be prosecuted under the new definition of a "controlled drug analog" as a felony. RSA 359-O is reenacted under SB 34-FN to prohibit the sale or possession of synthetic urine and urine additives. Synthetic urine samples have no legitimate purpose - they are designed specifically to provide blank urine samples for those who must take drug tests, perhaps as a condition of employment or probation/parole. An individual utilizing synthetic urines could be putting others at risk, as in the case of a truck driver who may be using drugs and driving on NH's roadways, or prevent an individual from receiving services, such as rehab.

Robert Oxley – provided written testimony

Director, Division of Field Services, NH Department of Corrections (NHDOC)

- NH's definition of a "controlled drug analog" under RSA 318-B:1, VI-a is unusable as written. The inclusion of the phrase "was specifically designed to produce an effect substantially similar to a controlled drug" is almost impossible for prosecutors to prove. The State cannot prove who designed many of these novel synthetic drugs and cannot prove what their intention was. SB 34-FN focuses the definition on the chemistry of the drug rather than on a manufacturer's intent and aligns the state's definition with the federal definition.
- The adverse effects of NH's definition of a "controlled drug analog" became clear nearly five years ago when NHDOC's Claremont District Office in Sullivan County confronted bath salts. These chemicals have been an increasing problem for NHDOC's Division of Field Services. Probationers and parolees demonstrated all the signs of a drug induced high, but current urine testing utilized by NHDOC did not detect certain controlled drug analogs. NHDOC has had to rely on a probationer or parolee's self-admission, even while observing controlled drug analog paraphernalia in their possession or property.
- The adjustments in SB 34-FN will give law enforcement the means to combat the sophisticated synthetic-type drugs such as bath salts, improve the lives and opportunities for those in communities impacted by these drugs, and make these drugs less available.
- Senator Bradley asked if there was anything in SB 34-FN that would impact an individual who has a prescription for medical marijuana.
 - Mr. Oxley said he is not aware, but he could respond to his question at a later time.
 - UPDATE: Mr. Oxley spoke with the NH State Police Forensic Laboratory. Therapeutic cannabis is derived from the cannabis plant and is a vegetative matter. Cannabis is not a synthetic drug analog. Therefore, the changes in SB 34-FN would not impact NH's therapeutic cannabis program.

Summary of testimony presented in opposition:

*John Light - provided written testimony
Manchester, NH*

- Opposed to SB 34-FN for three reasons:
 - Separation of concerns principle: SB 34-FN seeks to achieve two goals at the same time - 1) redefine the definition of a "controlled drug analog" and 2) ban synthetic urine and urine additives. State legislators and the public are being forced to either accept both or neither of these items. These two concerns should be split into two separate bills so the merits of each concern could be addressed separately.
 - Paternalistic government control upon NH residents and entrepreneurs: SB 34-FN bans the sale and possession of synthetic urines and urine additives. Instead of a ban on synthetic urine and urine additives, the State should look to establish penalties on those who use these products to fake drug tests. Employers themselves could impose penalties. The issue is not the substance, but the fraudulent use of that substance.
 - Drug prohibition does not work: banning or prohibiting the sale or possession of drugs does not disincentivize their use. The black market for drugs has only gotten worse. The State should be repealing ineffective drug laws rather than doubling down on them.

Neutral Information Presented:

Aidan Moore

NH Liquor Commission

- SB 34-FN's Section 1 makes changes to RSA 179:57, I to make the statute easier to read through a more detailed breakdown. When certain drug analogs like spice were available for sale in retail establishments, these products were often sold in businesses that were licensed to sell alcohol. RSA 179:57, I was meant to help get drug analogs out of retail establishments. Section 1 makes no changes to current law.

GJR

Date Hearing Report completed: January 20, 2021.

Speakers

Name	Title	Representing	Position	Testifying
D'Allesandro Lou	An Elected Official	SD20	Support	Yes
Staples Melisa	State Agency Staff	NH Dept. of Safety	Support	Yes
Moore Aidan	State Agency Staff	NH Liquor COmission	Neutral	Yes
Light John	A Member of the Public	Myself	Oppose	Yes
Oxley Robert	State Agency Staff	Department of Corrections	Support	Yes
Giuda Bob	An Elected Official	NH Senate District 2	Support	No
See Alvin	A Member of the Public	Myself	Oppose	No
Frey Kathryn	A Lobbyist	Myself	Support	No
Sargent Elizabeth	A Lobbyist	NH Association of Chiefs of Police	Support	No
Rosenwald Cindy	An Elected Official	SD 13	Support	No

Testimony



DEPARTMENT OF CORRECTIONS
STATE OF NEW HAMPSHIRE

P. O. BOX 1806

CONCORD, NH 03302-1806

Office of the Commissioner

FROM: Robert Oxley, Director of Field Services **DATE:** January 20, 2021

SUBJECT: **SB34 – relative to definition of a controlled drug analog** **OFFICE:** Commissioner’s Office

Phone: 271-5603

Fax: 271-5643

TO: The Honorable Members of Senate Health and Human Services Committee

.....

The New Hampshire Department of Corrections (NHDOC) is in support of SB34, for the following reasons:

SB34 seeks to correct the problems with how NH currently defines controlled drug analog in law. As the law stands today, NH’s current analog definition is unusable as written. The requirement that the potential analog drug “was specifically designed to produce an effect substantially similar to a controlled drug” is almost impossible to prove. Not only do we have no idea who designed many of these novel synthetic drugs (most of them are from China), we certainly cannot presume what their intention was.

SB34 appropriately changes the definition focusing on the chemistry rather than the drug dealers intent. Making this adjustment that a controlled drug analog has a chemical structure substantially similar to the chemical structure of a controlled substance, and has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance.

The adverse effects of NH’s definition of a controlled drug analog when specifically dealing with “Bath Salts” approximately five years ago first affected the NHDOC Claremont District Office in Sullivan County. These chemicals have been an ever-increasing problem for the NHDOC Division of Field Services.

Probation and parole officers within Sullivan County were aware that some of their probationers and parolees were showing all of the signs of a drug induced high, including but not limited to, dreary eyes, physical apathy, and time lapses in their judgement. Current urine testing utilized by NHDOC and the NH State Laboratory confirmation process does not detect certain controlled analog drugs, to include “bath

salts.” The probation/parole officers have relied on probationers and parolees self-admissions and observing controlled drug analog paraphernalia in their possession or property.

Bath salts are just one example of a substance structured in order to mimic a controlled substance, and the effect of the “high,” but with a limited ability for the Probation Parole officers to effectively screen for use of the controlled drug analog. This makes the synthetic type drug a popular choice for drug users as there is limited exposure for detection by probation/parole officers. US Customs have made the Claremont District Office of Probation/Parole aware of recent sizable seizures of bath salts. In the last 3-4 months about 7-8 packages of bath salts addressed to Claremont and/or Newport (Sullivan County) were intercepted and seized by US Customs and eventually turned over to NH Drug Task Force. These packages have an estimated street value of at least \$100,000. Although these issues started in the Sullivan County area, it has expanded out to Hillsborough County and Belknap County, that we are aware of, and possibly others. As drug dealers continue to get more sophisticated in the area of controlled drug analogs, we expect to see more in the future throughout the State of N.H.

The proposed adjustments in SB34 allow our probation parole officers to focus on combating these sophisticated synthetic type drugs such as “bath salts” with a prosecutorial tool and not an obstacle by not requiring the unrealistic testimony from a drug dealer or chemist that they designed their drug to mimic a high. This effective tool to combat such a devastatingly harmful drug such as “bath salts” will improve the lives and opportunities for those in the communities mostly impacted by these synthetic type drugs. This will also improve the rehabilitative opportunities for the probation/parole population as this law will allow effective enforcement against the synthetic drugs and will make these types of drugs less available.

The Department appreciates the support of Senator D’Allesandro and others for bringing this bill forward to align our State definition to the Federal definition while also giving those working in NH Communities the tools we need to stop the spread of these drugs and to continue to focus on public safety.

Griffin Roberge

From: John Light <decriminalizenh@sent.com>
Sent: Wednesday, January 20, 2021 8:49 PM
To: Griffin Roberge
Subject: Written comments on SB29 and SB34

Hello,

I attended the remote Health and Human Services Committee hearing today for SB29 and SB34. In case it is helpful for the committee to have a written copy of my comments I have included them below.

Best regards,

John Light

SB29: relative to the health risks associated with dispensing high-concentration marijuana in alternative treatment centers

I am here to oppose SB29 for two reasons:

The first reason that I oppose the bill is the generally paternalistic nature of the bill. It is true that some people who consume cannabis may experience some negative side effects. But this is true of practically all substances, even water, which all humans need to survive. Yes – it is possible to drink too much water and become seriously ill. The condition is called water toxemia. And yet we do not require permission from the state to drink excessive amounts of water. Why then should we require permission from the state to consume allegedly excessive amounts of THC?

In any case, increased concentration of THC doesn't necessarily equate to increased danger to the user. The same way you might drink a full bottle of beer but only a shot of gin, a medical cannabis user might smoke a full joint worth of low THC cannabis but only a small vaporizer dose of higher concentrate cannabis. The relevant information is not the potency alone but the potency in combination with the specific dose and method of ingestion, which this bill does not explicitly take into consideration.

The second reason that I oppose the bill is the seemingly arbitrary age limit imposed for consuming allegedly excessive amounts of THC. Although the Statement of Intent points to the Surgeon General's warning that there is risk to the brains of adolescents ranging from age 12 to 25 years old, the bill puts the age limit for requiring a permission slip to consume allegedly excessive THC amounts at 21 years of age. Are the brains of 21 to 25 year olds not as important as those below 21 years old? What is the rationale for the 21 year old age limit, when the Surgeon General's warning cited in this bill states there is risk up until the age of 25?

In any case, adults 18 and older should be free to consume substances with allegedly excessive amounts of THC as they and their healthcare providers see fit, without the need for an exception from the government.

For these reasons, I ask that you reject this bill in its entirety.

SB34: relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives

I am here to oppose SB34 for three reasons:

The first reason I oppose this bill is based on the separation of concerns principle. This bill intends to achieve two quite different and unrelated goals at the same time, first to redefine a controlled drug analog and amend sections of the law related to drug analogs and second to ban synthetic urine and urine additives.

Legislators and the public are therefore forced into the uncomfortable position of accepting either both or neither of these items, even though they may support one but oppose the other.

I recommend splitting these concerns into two separate bills so that the merit of each of these legislative goals can be considered and voted on separately.

The second reason I oppose this bill is for the paternalistic government control the bill places upon New Hampshire residents and entrepreneurs by banning the manufacture, possession, sale of physically harmless substances, namely synthetic urine.

I sympathize with what I assume is the motivation for this ban, which is to prevent people from using such synthetic urine products to defraud either the state or employers. However in these instances it is already possible to deter such fraud by imposing penalties for the fraud itself. For example, the state can impose a penalty on probation and parole offenders who use synthetic urine or additives to fraudulently pass a drug test. Employers can similarly impose penalties on employees who use synthetic urines or additives to do the same. The problem is not the substance (which may have non-fraudulent uses, for example pranks or theatrics) but the fraudulent use. And as I have noted, such fraudulent use can already be dealt with using policies set by the state and employers in the agreements that they have with any counterparties whom they wish to deter from fraudulently using such substances.

The third reason I oppose the bill is that the long history of drug prohibition has shown that prohibition does not work. Criminalization has not slowed or stopped drug abuse, and in fact by virtually any measure drug abuse and the black market for drugs has only gotten worse since the prohibition of drugs became widespread policy in the United States in the 20th century. We should be repealing these ineffective laws, not doubling down on them by making them more stringent.

For these reasons, I ask that you reject this bill in its entirety.



Colonel Nathan A. Noyes
Director

State of New Hampshire

DEPARTMENT OF SAFETY

Robert L. Quinn, Commissioner of Safety

Division of State Police

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

FORENSIC LABORATORY

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(603)223-3855 Fax: 271-5936

Melisa W. Staples
Laboratory Director

Melisa Staples

Director, NHSP Forensic Laboratory

SB 34 key points, verbal testimony:

Second part of this legislation regarding drug analogs, starting on page 1 line 19:

Around 2012, synthetic drugs such as Spice and K2 became readily available, requiring law enforcement and medical personnel to respond to numerous overdoses on a daily basis, many in public locations. In fact, by 2014, these drugs led then-Governor Maggie Hassan to declare a state of emergency due to the extreme public health threat. Legislation put in place at the time was successful in quelling the distribution of these drugs. However, drug analogs such as Bath Salts are becoming prevalent once again, particularly in the Western part of the state. This is causing medical emergencies and increases in crime, but the current law does not support prosecution for these drugs. The current law regarding what is considered to be a drug analog is essentially unenforceable.

Current Verbiage for analog

VI-a. "Controlled drug analog" means a substance that has a chemical structure substantially similar to that of a controlled drug and that was specifically designed to produce an effect substantially similar to that of a controlled drug. The term shall not include a drug manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug and Cosmetic Act, 52 Stat. 1052 (21 U.S.C. 355).

Problems with each of the two components of definition:

- "substantially similar" structure is not defined, so prosecutors do not have a clear standard for guidance



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Colonel Nathan A. Noyes
Director

State of New Hampshire

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Melisa W. Staples

Laboratory Director

-“specifically designed to produce an effect...” would require prosecution to know what the person who manufactured the drug was thinking, what their intent was, when they produced the drug. This is almost impossible to prove.

New bill solves both of these problems. New definition of substantially similar structure is provided (Page two, line 10).

Intent of manufacturer is replaced with the ability to produce laboratory studies which show this analog to essentially have the same effect as the original drug (page 1 line 23). Communication with the DEA indicates that they are pretty quick to produce these studies, which support the effect scientifically rather than a person’s intended effect.

Chapter 359-O portion which is being repealed was a stopgap measure to prohibit the sale of Spice in retail establishments. This was put in place at a time when people could purchase Spice at the corner market. Made it a violation to sell these types of analogs, and was successful in getting the product off the shelves, but then when they went black market, the analog law could not be enforced effectively. With new definition of analog, this section of 359-O is no longer needed, as sales in retail establishments could be prosecuted under the new definition as a felony.

New 359-O regarding synthetic urine:

Synthetic urine samples have no legitimate purpose – they are designed specifically to provide blank urine samples for those who must take drug tests, perhaps as a condition of employment (CDL license) or probation/parole or as part of a rehab program. These products are sold under names such as Quick Fix, Ultra Pure, Magnum Detox. An individual utilizing synthetic urines could be putting others at risk, as in the case of a truck driver who may be using drugs and driving on our highways, or prevent themselves from receiving services, such as rehab, which could be beneficial.



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Voting Sheets

Senate Health and Human Services Committee

EXECUTIVE SESSION RECORD

2021-2022 Session

Bill # SB 34

Hearing Date: 1/26/21

Executive Session Date: 1/20/21

Motion: OTP Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion: Consent Calendar Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Whitley

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, January 20, 2021

THE COMMITTEE ON Health and Human Services

to which was referred **SB 34-FN**

AN ACT

relative to the definition of a controlled drug analog
and prohibiting the sale or possession of synthetic
urine and urine additives.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Rebecca Whitley
For the Committee

New Hampshire's current definition of a controlled drug analog is not aligned with the federal definition, does not require prosecutors with clear guidance, and requires them to prove who manufactured the drug, what the manufacturer's intent was, and when the manufacturer produced the drug. This bill creates a new definition of a controlled drug analog that gives prosecutors a clear standard to prove that a controlled drug analog has the same effects of a certain controlled drug or a controlled drug class. This change will assist New Hampshire's law enforcement in combating the spread of synthetic drugs. The bill also prohibits the sale or possession of synthetic urine and urine additives, which are specifically designed to provide blank urine samples for those who must take drug tests.

Griffin Roberge 271-3042

FOR THE CONSENT CALENDAR

HEALTH AND HUMAN SERVICES

SB 34-FN, relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.

Ought to Pass, Vote 5-0.

Senator Rebecca Whitley for the committee.

New Hampshire's current definition of a controlled drug analog is not aligned with the federal definition, does not require prosecutors with clear guidance, and requires them to prove who manufactured the drug, what the manufacturer's intent was, and when the manufacturer produced the drug. This bill creates a new definition of a controlled drug analog that gives prosecutors a clear standard to prove that a controlled drug analog has the same effects of a certain controlled drug or a controlled drug class. This change will assist New Hampshire's law enforcement in combating the spread of synthetic drugs. The bill also prohibits the sale or possession of synthetic urine and urine additives, which are specifically designed to provide blank urine samples for those who must take drug tests.

General Court of New Hampshire - Bill Status System

Docket of SB34

Docket Abbreviations

Bill Title: relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.

Official Docket of SB34.:

Date	Body	Description
1/12/2021	S	Introduced 01/06/2021 and Referred to Health and Human Services; SJ 3
1/14/2021	S	Remote Hearing: 01/20/2021, 01:00 pm; Links to join the hearing can be found in the Senate Calendar; SC 7
1/21/2021	S	Committee Report: Ought to Pass, 02/04/2021; Vote 5-0; CC; SC 9
2/4/2021	S	Ought to Pass: RC 23Y-1N, MA; OT3rdg; 02/04/2021; SJ 3
3/10/2021	H	Introduced (in recess of) 02/25/2021 and referred to Criminal Justice and Public Safety HJ 4 P. 48
3/17/2021	H	Public Hearing: 03/17/2021 10:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92274431603 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
5/10/2021	H	Executive Session: 05/10/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/97305033264
5/26/2021	H	Committee Report: Ought to Pass (Vote 13-8; RC) HC 26 P. 17
6/3/2021	H	Lay on Table (Rep. Klein-Knight): MF DV 135-237 06/03/2021 HJ 8 P. 90
6/3/2021	H	Ought to Pass: MA RC 240-134 06/03/2021 HJ 8 P. 90
7/1/2021	H	Enrolled (in recess of) 06/24/2021
7/1/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); SJ 20
7/13/2021	S	Signed by the Governor on 07/09/2021; Chapter 0115; Effective 09/07/2021

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 24-FN

Senate Committee: HHS

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted): none

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Kirsten Koch
Committee Aide

7/26/21
Date

Senate Clerk's Office AK