

CONSENT CALENDAR

January 12, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Criminal Justice and Public Safety
to which was referred HB 1232-FN,**

**AN ACT reducing the penalty for first offense drug
possession and repealing certain mandatory minimum
sentences. Having considered the same, report the
same with the recommendation that the bill be
REFERRED FOR INTERIM STUDY.**

Rep. Terry Roy

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1232-FN
Title:	reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.
Date:	January 12, 2022
Consent Calendar:	CONSENT
Recommendation:	REFER FOR INTERIM STUDY

STATEMENT OF INTENT

The majority, after having heard testimony from the sponsor and law enforcement, determined that this bill, while seemingly simple on its face, would have far reaching effects on the ability to reach plea agreements and also removes a strong deterrent to illegal drug activity near and around children. There are several other bills dealing with the same subject matter this term that the majority feels would be better vehicles for sentencing changes. Therefore, the majority recommends interim study of this bill.

Vote 17-1.

Rep. Terry Roy
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 1232-FN, reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences. **REFER FOR INTERIM STUDY.**

Rep. Terry Roy for Criminal Justice and Public Safety. The majority, after having heard testimony from the sponsor and law enforcement, determined that this bill, while seemingly simple on its face, would have far reaching effects on the ability to reach plea agreements and also removes a strong deterrent to illegal drug activity near and around children. There are several other bills dealing with the same subject matter this term that the majority feels would be better vehicles for sentencing changes. Therefore, the majority recommends interim study of this bill. **Vote 17-1.**

REGULAR CALENDAR

June 2, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Criminal Justice and Public Safety
to which was referred HB 1232-FN,**

**AN ACT reducing the penalty for first offense drug
possession and repealing certain mandatory minimum
sentences. Having considered the same, report the
same: NOT RECOMMENDED FOR FUTURE
LEGISLATION.**

Rep. Terry Roy

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1232-FN
Title:	reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.
Date:	June 2, 2022
Consent Calendar:	REGULAR
Recommendation:	NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT

After hearing testimony at the public hearing and further discussion during executive session, the committee agreed that this bill should not be recommended for future legislation. Removing the minimum mandatory sentence for selling drugs within a school zone both removes a valuable law enforcement tool as well as a disincentive to unlawfully sell these harmful substances to children.

Vote 11-4.

Rep. Terry Roy
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 1232-FN, reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.**NOT RECOMMENDED FOR FUTURE LEGISLATION .**

Rep. Terry Roy for Criminal Justice and Public Safety. After hearing testimony at the public hearing and further discussion during executive session, the committee agreed that this bill should not be recommended for future legislation. Removing the minimum mandatory sentence for selling drugs within a school zone both removes a valuable law enforcement tool as well as a disincentive to unlawfully sell these harmful substances to children. **Vote 11-4.**

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1232-FN

BILL TITLE: reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

DATE: January 12, 2022

LOB ROOM: 204

MOTIONS: REFER FOR INTERIM STUDY

Moved by Rep. Roy

Seconded by Rep. Welch

Vote: 17-1

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Scott Wallace, Clerk



2021 SESSION

Criminal Justice and Public Safety

Bill #: HB1232 Motion: F/S AM #: _____ Exec Session Date: 1-12-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	17		
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
Hopper, Gary S. <u>TIM LANG</u>	4		
Green, Dennis E.	5		
Wallace, Scott Clerk	6		
Testerman, Dave	7		
True, Chris	8		
Pratt, Kevin M.	9		
Marston, Dick	10		
Harriott-Gathright, Linda C.	11		
Pantelakos, Laura C.	12		
O'Hearne, Andrew S.			1
Bordenet, John	13		
Meuse, David	14		
Newman, Ray E.	15		
Bouldin, Amanda C.		1	
Conley, Casey M.			1
Klein-Knight, Nicole			1
Bradley, Amy	16		

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1232-FN

BILL TITLE: reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

DATE: June 2, 2022

LOB ROOM: 202-204

MOTION:

Interim Study (2nd yr) Not Recommended for Future Legislation

Moved by Rep. Green

Seconded by Rep. Pratt

Vote: 10-4

Respectfully submitted,

Rep Scott Wallace, Clerk

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB1232 on 2022-01-12

Support: 3 Oppose: 6 Neutral: 0 Total to Testify: 0

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>
Howland, Curtis	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	No	1/10/2022 1:03 PM
Berry, Jake	Concord, NH jberry@new-futures.org	A Lobbyist	New Futures	Support	No	No	1/11/2022 11:02 AM
Bryfonski, John	Bedford Police Chief, NH jbryfonski@bedfordnh.org	A Member of the Public	Myself	Oppose	No	No	1/11/2022 12:48 PM
Hannon, Joe	Lee, NH Joehannon4nh@gmail.com	A Member of the Public	Myself	Support	No	No	1/12/2022 9:14 AM
Parsons, John	Grantham, NH jwporp@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/12/2022 9:15 AM
Hoebeke, Joseph	Hollis, NH jhoebeke@hollisnh.org	A Member of the Public	NH Association of Chiefs of Police	Oppose	No	No	1/12/2022 9:15 AM
Levesque, Brian	Manchester, NH blevesque@merrimacknh.gov	A Member of the Public	Myself	Oppose	No	No	1/12/2022 9:31 AM
Reynolds, Charles	Dover, NH reynolds.charles@comcast.net	A Member of the Public	Myself	Oppose	No	No	1/12/2022 10:02 AM
Lascaze, Joseph	Bedford, NH Joseph@aclu-nh.org	A Lobbyist	American Civil Liberties Union	Support	No	No	1/12/2022 10:11 AM
Dunn, Robert	Manchester, NH rdunn@rcbm.org	A Lobbyist	Roman Catholic Diocese of Manchester	Oppose	No	No	1/12/2022 10:46 AM
Reams, Mark	Amherst, NH mreams@amherstnh.gov	A Member of the Public	Myself	Oppose	No	No	1/12/2022 10:47 AM

Archived: Thursday, March 10, 2022 2:49:09 PM

From: Joseph Lascaze

Sent: Friday, January 14, 2022 9:38:50 AM

To: ~House Criminal Justice and Public Safety

Subject: HB 1232

Importance: Normal

Attachments:

Fact Sheet - HB 1232.pdf ;

Dear Members of the Criminal Justice and Public Safety Committee,

I write from the ACLU of New Hampshire in strong support of HB 1296, which will be before your committee this morning at 11:15am. Please find attached our fact sheet on the bill, which includes a summary of the bill and why we strongly support it.

Thank you for your time and consideration. I would be happy to discuss the bill at your convenience.

Best regards,

Joseph Lascaze

Smart Justice Campaign Manager

American Civil Liberties Union of New Hampshire

18 Low Avenue, Concord, NH 03301

603.227.6683 x 108 | Joseph@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.

OPPOSE HB 1232 -FN,

reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences

Dear Criminal Justice and Public Safety Committee,

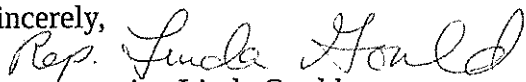
As your title says" Public Safety committee", I urge you to oppose this bill because it will NOT promote public safety.

Minimum mandatory sentencing allows/forces people convicted to get treatment so that hopefully there will be fewer deaths including from automobile accidents, less child neglect, spousal abuse, violent crime, and homelessness. It is unhealthy.

We are in a time of unparalleled drug abuse so why should we be enabling it?

We have to address this problem earlier rather than later.

Sincerely,



Representative Linda Gould
district 7 Hillsborough

TESTIMONY ON HB 1232-FN
JANUARY 12, 2022
BY REP. MARK WARDEN, PRIME SPONSOR

Dear CJPS Committee Members,

I've long been an advocate for fair sentencing and a transparent criminal justice system that respects our cultural norms while protecting individual liberty.

This proposed legislation is similar to what this committee heard last year (HB 615 in 2021). That bill passed the committee and the full House before dying in the Senate.

This particular bill is a stripped down version; it's simpler. The OLS analysis is correct: "This bill reduces the penalties and removes mandatory minimum sentences for certain first offense drug offenses." And in the METHODOLOGY section: "The Judicial Council states this bill would reduce first-time possession, transportation or use of certain controlled drugs from a class B felony to an unclassified misdemeanor. Subsequent violations could be sentenced as class B felonies or an unclassified misdemeanor at the discretion of the prosecutor."

Looking at the bill itself, Section 1 reduces the penalty on first-time offenses from a Felony B to Misdemeanor. If the offender has been convicted previously, then the penalty is reduced from Felony A to "Felony B or misdemeanor."

In section 2, the first paragraph removes the requirement for mandatory minimum sentences of one year (selling near a school). The second paragraph relates to "drug enterprise leaders" and removes the 25 year mandatory minimum sentence, leaving the sentence up to the court.

Section 3 repeals penalties for schedule V controlled drugs. According to the DEA.gov website, "Schedule V drugs are defined as drugs with lower potential for abuse than Schedule IV and consist of preparations containing limited quantities of certain narcotics. Schedule V drugs are generally used for antidiarrheal, antitussive, and analgesic purposes. Some examples are: cough preparations with less than 200 mg of codeine per 1000 milliliters (Robitussin AC), Lomotil, Motofen, Lyrica..."

The main goal here is to reduce penalties on first-time offenders, with a goal of reducing the backlog in the clogged court system and keeping people guilty of victimless crimes from potentially having their livelihood ruined and opportunities denied because of a conviction.

This topic was brought to my attention by an Assistant County Attorney who said she was tired of seeing young people's lives ruined; she thought her office should have more discretion in prosecution. She was particularly interested in changing the law to allow for possession of personal use levels of fentanyl and heroin. As bad as those things can be, they are pervasive and running these people through the criminal justice system often exacerbates their problems. She wanted the option of putting them into a treatment program instead of throwing the book at them. She said the County Attorney's office is overwhelmed. While this bill isn't exactly what she was looking for, it was the impetus for the proposed legislation we have today.

Rep. Mark Warden
Manchester 603.391.2888 mark.warden@leg.state.nh.us

HB 1232-FN - AS INTRODUCED

2022 SESSION

22-2423

04/05

HOUSE BILL ***1232-FN***

AN ACT reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

SPONSORS: Rep. Warden, Hills. 15

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill reduces the penalties and removes mandatory minimum sentences 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 Two

AN ACT reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

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

1 1 Controlled Drug Act; Penalties. RSA 318-B:26, II(a) is repealed and reenacted to read as
2 follows:

3 (a) In the case of a controlled drug or its analog, other than those specifically covered in
4 this section, the person shall be guilty of a misdemeanor, except that any person who commits any
5 such violation after one or more prior offenses as defined in RSA 318-B:27 shall be sentenced to a
6 class B felony or a misdemeanor, at the discretion of the sentencing court.

7 2 Controlled Drug Act; Penalties. Amend RSA 318-B:26, V-VI to read as follows:

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

17 VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318-B:2,
18 XII as a drug enterprise leader ~~[shall]~~ **may** be sentenced to ~~[a mandatory minimum term of not less
19 than 25 years and may be sentenced to]~~ **an extended term of imprisonment which may include**
20 a maximum term of not more than life imprisonment. The court may also impose a fine not to
21 exceed \$500,000 or 5 times the street value of the controlled drug or controlled drug analog involved,
22 whichever is greater. ~~[Upon conviction, the court shall impose the mandatory sentence unless the
23 defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the
24 defendant and the state have entered into a post-conviction agreement which provides for a lesser
25 sentence. The negotiated plea or post-conviction agreement may provide for a specified term of
26 imprisonment within the range of ordinary or extended sentences authorized by law, a specified fine,
27 or other disposition. In that event, the court at sentencing shall not impose a lesser term of
28 imprisonment or fine than that expressly provided for under the terms of the plea or post-conviction
29 agreement.]~~

HB 1232-FN - AS INTRODUCED

- Page 2 -

- 1 3 Repeal. RSA 318-B:26, II(b), relative to penalties for schedule V controlled drugs or their
- 2 analog, is repealed.
- 3 4 Effective Date. This act shall take effect January 1, 2023.

**HB 1232-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT reducing the penalty for first offense drug possession and repealing certain mandatory minimum sentences.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
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 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 have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
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. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in

appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
Department of Corrections	FY 2022	FY 2023
FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

The Judicial Council states this bill would reduce first-time possession, transportation or use of certain controlled drugs from a class B felony to an unclassified misdemeanor. Subsequent violations could be sentenced as class B felonies or an unclassified misdemeanor at the discretion of the prosecutor. The bill also eliminates mandatory minimums for school zone and drug enterprise leader charges. The Council indicates the bill has the potential for a significant impact on indigent defense costs. Unclassified misdemeanors can be charged as class A misdemeanors if the prosecution submits requisite notice. Because the indigent defense delivery system does not provide representation to defendants charged with class B misdemeanors, first-time possession charges that are brought as class B misdemeanors would no longer require legal representation. The Public Defender program opens an average of 1,100 to 1,400 straight possession cases each year. It is not possible to determine what percentage of these cases would be charged as class B misdemeanors under the new law. The Council assumes that any indigent defendant charged with a class A misdemeanor would be entitled to court appointed counsel. However, these charges would be less time-consuming and less costly than the class B felonies currently brought for possession crimes. Because of the high-stakes involved in mandatory minimum sentences, such charges have historically required more attorney time to defend. The Council states, while elimination of these mandatory minimums would not impact the number of cases charged, it could reduce the amount of attorney time currently needed to defend against these allegations.

The Judicial Branch indicates the overall fiscal impact on the Branch is indeterminable. If the bill becomes law, it will burden Circuit Court resources with a 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. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

AGENCIES CONTACTED:

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