

REGULAR CALENDAR

January 12, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 1361-FN,

AN ACT establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Terry Roy

FOR THE MAJORITY OF THE COMMITTEE

MAJORITY COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1361-FN
Title:	establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute.
Date:	January 12, 2022
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2022-0087h

STATEMENT OF INTENT

The majority of the Criminal Justice and Public Safety Committee after hearing testimony from the sponsor and law enforcement found that this bill Ought to Pass. The years long opioid crisis in New Hampshire continues with an average of 407 deaths per year. That is a little over 3% of all deaths in New Hampshire every year being caused by opioids. Fentanyl and Carfentanyl are the most lethal of opioids and according to the Drug Enforcement Agency (DEA), almost all of these substances are being imported from outside of the U.S. Once in the U.S., New Hampshire law enforcement traces the vast majority of all opioids found in our State to have come from points outside of New Hampshire. While New Hampshire already has penalties for drug possession and distribution, there are no criminal statutes addressing the importation of drugs into New Hampshire with the intent to distribute them within our borders. The majority of the committee found that this bill would provide a powerful disincentive to those wishing to make a profit from the importation and sale of this poison in our state. In passing this, we would join many other states from Maine to California who have similar laws. The minority claim, that interstate drug traffic is a federal matter, ignores the rarity with which U.S. Attorneys exercise jurisdiction in these matters. The minority also claims that this law is contradictory to the bipartisan attempt to lower incarceration rates in New Hampshire. To the contrary, strategically targeting importers and thus reducing the available supply, would reduce the number of NH citizens charged with possession and possibly save lives in the process. Passing this into law would give law enforcement and District Attorneys one more tool in their uphill battle to protect Granite Staters from this costly scourge.

Vote 12-8.

Rep. Terry Roy
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 1361-FN, establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Terry Roy for the **Majority** of Criminal Justice and Public Safety. The majority of the Criminal Justice and Public Safety Committee after hearing testimony from the sponsor and law enforcement found that this bill Ought to Pass. The years long opioid crisis in New Hampshire continues with an average of 407 deaths per year. That is a little over 3% of all deaths in New Hampshire every year being caused by opioids. Fentanyl and Carfentanyl are the most lethal of opioids and according to the Drug Enforcement Agency (DEA), almost all of these substances are being imported from outside of the U.S. Once in the U.S., New Hampshire law enforcement traces the vast majority of all opioids found in our State to have come from points outside of New Hampshire. While New Hampshire already has penalties for drug possession and distribution, there are no criminal statutes addressing the importation of drugs into New Hampshire with the intent to distribute them within our borders. The majority of the committee found that this bill would provide a powerful disincentive to those wishing to make a profit from the importation and sale of this poison in our state. In passing this, we would join many other states from Maine to California who have similar laws. The minority claim, that interstate drug traffic is a federal matter, ignores the rarity with which U.S. Attorneys exercise jurisdiction in these matters. The minority also claims that this law is contradictory to the bipartisan attempt to lower incarceration rates in New Hampshire. To the contrary, strategically targeting importers and thus reducing the available supply, would reduce the number of NH citizens charged with possession and possibly save lives in the process. Passing this into law would give law enforcement and District Attorneys one more tool in their uphill battle to protect Granite Staters from this costly scourge. **Vote 12-8.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

January 12, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 1361-FN,

AN ACT establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Amanda Bouldin

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1361-FN
Title:	establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute.
Date:	January 12, 2022
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill increases penalties for transporting across state lines any amount of any controlled drug listed under Chapter 318-B. The original bill applies to cannabis products in addition to all other substances named in Chapter 318-B, despite cannabis being legal or nearly-legal in every state bordering this legislature's jurisdiction. The amendment excludes cannabis entirely and is an improvement supported by the minority, however, the amendment does not go far enough. The minority opposes increasing penalties and creating new mandatory minimum sentences after years of bipartisan efforts in this body to reduce and eliminate mandatory minimums in New Hampshire and reduce our prison population to a manageable, affordable level. This bill takes discretion away from our courts and disallows our judges from taking circumstance into account when determining sentencing. There is significant doubt that these increased penalties will reduce the importation of illegal substances into our state, and while testimony on this bill included repeated claims that non-residents would be stopped from bringing illegal substances into New Hampshire with the intent to distribute, there is actually no carve-out in the bill for New Hampshire residents. There is also significant doubt that this bill would impact "drug kingpins" whatsoever, as those tasked with transporting substances across state lines are typically unwitting small-time users, not "drug kingpins". When the unwitting user is arrested and given a mandatory minimum sentence regardless of circumstance, another will be available to replace them and make the next drive across the border. In conclusion, this bill will not accomplish its intended purpose of reducing the importation of illegal substances into the state. However, it will increase our prison population and, accordingly, our taxes.

Rep. Amanda Bouldin
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 1361-FN, establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute. **INEXPEDIENT TO LEGISLATE.**

Rep. Amanda Bouldin for the **Minority** of Criminal Justice and Public Safety. This bill increases penalties for transporting across state lines any amount of any controlled drug listed under Chapter 318-B. The original bill applies to cannabis products in addition to all other substances named in Chapter 318-B, despite cannabis being legal or nearly-legal in every state bordering this legislature's jurisdiction. The amendment excludes cannabis entirely and is an improvement supported by the minority, however, the amendment does not go far enough. The minority opposes increasing penalties and creating new mandatory minimum sentences after years of bipartisan efforts in this body to reduce and eliminate mandatory minimums in New Hampshire and reduce our prison population to a manageable, affordable level. This bill takes discretion away from our courts and disallows our judges from taking circumstance into account when determining sentencing. There is significant doubt that these increased penalties will reduce the importation of illegal substances into our state, and while testimony on this bill included repeated claims that non-residents would be stopped from bringing illegal substances into New Hampshire with the intent to distribute, there is actually no carve-out in the bill for New Hampshire residents. There is also significant doubt that this bill would impact "drug kingpins" whatsoever, as those tasked with transporting substances across state lines are typically unwitting small-time users, not "drug kingpins". When the unwitting user is arrested and given a mandatory minimum sentence regardless of circumstance, another will be available to replace them and make the next drive across the border. In conclusion, this bill will not accomplish its intended purpose of reducing the importation of illegal substances into the state. However, it will increase our prison population and, accordingly, our taxes.

Original: House Clerk

Cc: Committee Bill File

Rep. Roy, Rock. 32
January 12, 2022
2022-0087h
04/08

Amendment to HB 1361-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after
4 paragraph XIII the following new paragraph:

5 XIV. In addition to any other penalty imposed under this section, any person who enters this
6 state while possessing any substance prohibited by this chapter with the intent to distribute the
7 substance shall be guilty of a class A felony and shall be sentenced to a minimum of 5 years
8 imprisonment. Any vehicle or other conveyance used to transport a controlled substance into the
9 state shall be subject to forfeiture. This paragraph shall not apply to any cannabis-type drug.

Amendment to HB 1361-FN
- Page 2 -

2022-0087h

AMENDED ANALYSIS

This bill establishes an additional penalty for transportation of a controlled drug into New Hampshire with the intent to distribute. The bill excludes any cannabis-type drug.



2021 SESSION

Criminal Justice and Public Safety

 Bill #: HB 1361-FN Motion: OTP AM #: 0087H Exec Session Date: 1-12-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	19		
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
Hopper, Gary S. — TIM LANG	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.	16		
Conley, Casey M.	17		
Klein-Knight, Nicole			1
Bradley, Amy	18		



2021 SESSION

Criminal Justice and Public Safety

Bill #: HB 1361 FN Motion: OTPA AM #: 0087H Exec Session Date: 1-12-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	12		
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
Hopper, Gary S. <u>TIM WANO</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.		1	
Pantelakos, Laura C.	11		
O'Hearne, Andrew S.			1
Bordenet, John		2	
Meuse, David		3	
Newman, Ray E.		4	
Bouldin, Amanda C.		5	
Conley, Casey M.		6	
Klein-Knight, Nicole		7	
Bradley, Amy		8	

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1361-FN

BILL TITLE: establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute.

DATE: January 12, 2022

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:50am

Time Adjourned: 10:59am

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

Bill Sponsors:

Rep. Roy

TESTIMONY

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

Rep. Roy

- Introduced bill

Rep. Bouldin

- Asked if the amount of cannabis is too low at 2 oz.

Rep. Roy

- Said he considered NH law only

Rep. Newman

- asked for clarification at packaging for distribution of cannabis.

Rep. Abbas

- Asked to exclude cannabis from bill.

Rep. Roy

- Is not opposed

Rep True

- Asked what is the present law re: distribution

Rep. Roy

- It touches several statutes. Roy will send out laws re: distribution packages.

Respectfully submitted,

Rep. Scott Wallace, Clerk

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB1361 on 2022-01-12

Support: 5 Oppose: 2 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	Oppose	No	No	1/10/2022 1:01 PM
Bryfonski, John	Bedford Police Chief, NH jbryfonski@bedfordnh.org	A Member of the Public	Myself	Support	No	No	1/11/2022 12:41 PM
Hoebeke, Joseph	Hollis, NH jhoebeke@hollisnh.org	A Member of the Public	NH Association of Chiefs of Police	Support	No	No	1/12/2022 9:10 AM
Parsons, John	Grantham, NH jwporp@gmail.com	A Member of the Public	Myself	Support	No	No	1/12/2022 9:11 AM
Reynolds, Charles	Dover, NH reynolds.charles@comcast.net	A Member of the Public	Myself	Support	No	No	1/12/2022 9:56 AM
Lascaze, Joseph	Bedford, NH Joseph@aclu-nh.org	A Lobbyist	American Civil Liberties Union	Oppose	No	No	1/12/2022 10:11 AM
Reams, Mark	Amherst, NH mreams@amherstnh.gov	A Member of the Public	Myself	Support	No	No	1/12/2022 10:43 AM

HB 1361-FN - AS INTRODUCED

2022 SESSION

22-2800

04/11

HOUSE BILL ***1361-FN***

AN ACT establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute.

SPONSORS: Rep. Roy, Rock. 32

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill establishes an additional penalty for transportation of a controlled drug into New Hampshire with the intent to distribute.

.....

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute.

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

1 1 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after
2 paragraph XIII the following new paragraph:

3 XIV. In addition to any other penalty imposed under this section, any person who enters this
4 state while possessing any substance prohibited by this chapter with the intent to distribute the
5 substance shall be guilty of a class A felony and shall be sentenced to a minimum of 5 years
6 imprisonment. Any vehicle or other conveyance used to transport a controlled substance into the
7 state shall be subject to forfeiture. This paragraph shall not apply to 2 ounces or less of cannabis, or
8 any cannabis not exceeding the amount permitted as therapeutic cannabis pursuant to RSA 126-X.

9 2 Effective Date. This act shall take effect January 1, 2023.

**HB 1361-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing a penalty for any person who transports a controlled drug into New Hampshire with the intent to distribute.

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 Increase	Indeterminable Increase	Indeterminable Increase
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 Increase	Indeterminable Increase	Indeterminable Increase

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
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
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	\$54,386	\$54,386

Incarcerating an Individual		
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

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. 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. 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 and updated estimates will be available in the future.

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