

HB 328-FN - AS INTRODUCED

2023 SESSION

23-0238

04/10

HOUSE BILL **328-FN**

AN ACT an act legalizing certain controlled substances for persons 21 years of age or older.

SPONSORS: Rep. Verville, Rock. 2

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill legalizes the possession and use of lysergic acid diethylamide (LSD), mescaline, psilocybin, and peyote for persons 21 years of age and older.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Three

AN ACT an act legalizing certain controlled substances for persons 21 years of age or older.

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

1 1 Controlled Drug Act; Acts Prohibited. Amend RSA 318-B:2, XII to read as follows:

2 XII. A person is a drug enterprise leader if he conspires with one or more persons as an
3 organizer, supervisor, financier, or manager to engage for profit in a scheme or course of conduct to
4 unlawfully manufacture, sell, prescribe, administer, dispense, bring with or transport in this state
5 methamphetamine, [~~lysergic acid diethylamide,~~] phencyclidine (PCP) or any controlled drug
6 classified in schedule I or II, or any controlled drug analog thereof. A conviction as a drug enterprise
7 leader shall not merge with the conviction for any offense which is the object of the conspiracy.
8 Nothing in this section shall be construed to preclude or limit a prosecution or conviction of any
9 person for conspiracy or any other offense defined in this chapter.

10 2 New Paragraph; Controlled Drug Act; Acts Prohibited. Amend RSA 318-B:2 by inserting after
11 paragraph XVI the following new paragraph:

12 XVII. The possession or use of a hallucinogenic drug by a person 21 years of age or older
13 shall not be an offense under this chapter.

14 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(a)(2) to read as follows:

15 (2) ***In the case of a person under 21 years of age***, lysergic acid diethylamide, or
16 its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or
17 phencyclidine (PCP), or its analog, in a quantity of 10 grams or more including any adulterants or
18 dilutants.

19 4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(b)(3) to read as follows:

20 (3) ***In the case of a person under 21 years of age***, lysergic acid diethylamide, or
21 its analog, in a quantity of less than 100 milligrams including any adulterants or dilutants, or where
22 the amount is undetermined, or phencyclidine (PCP) or its analog, in a quantity of less than 10
23 grams, including any adulterants or dilutants, or where the amount is undetermined;

24 5 Effective Date. This act shall take effect January 1, 2024.

**HB 328-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT an act legalizing certain controlled substances for persons 21 years of age or older.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
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 legalizes the possession and use of lysergic acid diethylamide (LSD), mescaline, psilocybin, and peyote for persons 21 years of age and older. 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 fewer charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Complex Felony Case	\$3,195	\$3,244	\$3,366
Routine Criminal Case	\$644	\$657	\$779
Appeals	Varies	Varies	Varies
Judicial Council	FY 2023		FY 2024
Public Defender Program	Has contract with State to provide services.		Has contract with State to provide services.

Contract Attorney - Felony	\$825/Case \$105 administrative fee \$200 incarceration fee (If applicable)	\$825/Case \$105 administrative fee \$200 incarceration fee (If applicable)
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	\$90/Hour up to \$5,500	\$90/Hour up to \$5,500
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
Assigned Counsel - Supreme Court Appeal	\$125/Hour up to \$10,000	\$125/Hour up to \$10,000
<p>The Judicial Council foresees no adverse fiscal impact from the proposed legislation as it relates to the delivery of legal services to indigent defendants in criminal cases. Legalization of this subset of controlled drugs would eliminate the need for legal representation in state criminal cases where possession of these substances was the only offense charged. Although there are data on drug possession cases generally, there is limited information for drug offenses charging the defendant with possession of one of the substances in the proposed bill. For example, in FY2021, the Public Defender opened 10 LSD possession cases. However, this number may not include cases where LSD was one of several drugs leading to criminal prosecution. Offenses for possessing mushrooms or psilocybin are not separately tracked by the Public Defender. Accordingly, while the legalization of these substances will result in reduced state prosecutions, the projected savings of the proposed legislation is indeterminable.</p>		
Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	\$64,223	\$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	\$6,123	\$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	\$688	\$688
<p>The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the NH State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.</p>		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

The Judicial Branch indicates in 2021, there was 1 case filed under RSA 318-B:26, I(a)(2) and 1 case filed under RSA 318-B:26, I(b)(3). The Branch does not track the number of cases filed that fall within the definition of hallucinogenic drug in RSA 318-B. The Branch assumes there would be fewer criminal cases filed in the courts. While the decrease in filings under RSA 318-B:26, I(a)(2) and RSA 318-B:26, I(b)(3) would be insignificant, the Branch is unable to estimate the total decrease in filings that would result under other provisions of RSA 318-B.

The Department of Justice indicates it would not be involved in prosecutions or investigations related to this bill and any appeals would be handled within the current budget. Therefore, there would be no impact to the Department.

AGENCIES CONTACTED:

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

REGULAR CALENDAR

February 24, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 328-FN,

AN ACT an act legalizing certain controlled substances for persons 21 years of age or older. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Terry Roy

FOR THE MAJORITY OF THE COMMITTEE

MAJORITY COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 328-FN
Title:	an act legalizing certain controlled substances for persons 21 years of age or older.
Date:	February 24, 2023
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

After a public hearing, the majority of the committee found that HB this bill was inexpedient to legislate. This bill seeks to legalize hallucinogenic drugs such as LSD, mescaline, psilocybin, and peyote for persons 21 years of age and older. There was some testimony alluding to possible medical benefits to these drugs but nothing that has been embraced by the medical community to the level that would justify broad, unrestricted legalization. If there are indeed any medical benefits to these controlled substances, evidence of such should first be provided by extensive controlled studies, and then legalization proposed for the limited purposes for which they have been shown to be efficacious. In any event, barring changes at the federal level, even that would be pointless. The federal government continues to classify them as illegal for having no valid medical purpose. Unlike marijuana, people under the influence of these drugs have been shown to sometimes become violent and suicidal. There is no way to predict how each person will react. In the midst of a crisis where we are seeing young Granite Staters dying from illegal drugs, attempts by the legislature to legalize more of them, are in the opinion of the majority, drastically out of touch with what the majority of our constituents expect from us.

Vote 17-3.

Rep. Terry Roy
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 328-FN, an act legalizing certain controlled substances for persons 21 years of age or older.
MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.

Rep. Terry Roy for the **Majority** of Criminal Justice and Public Safety. After a public hearing, the majority of the committee found that HB this bill was inexpedient to legislate. This bill seeks to legalize hallucinogenic drugs such as LSD, mescaline, psilocybin, and peyote for persons 21 years of age and older. There was some testimony alluding to possible medical benefits to these drugs but nothing that has been embraced by the medical community to the level that would justify broad, unrestricted legalization. If there are indeed any medical benefits to these controlled substances, evidence of such should first be provided by extensive controlled studies, and then legalization proposed for the limited purposes for which they have been shown to be efficacious. In any event, barring changes at the federal level, even that would be pointless. The federal government continues to classify them as illegal for having no valid medical purpose. Unlike marijuana, people under the influence of these drugs have been shown to sometimes become violent and suicidal. There is no way to predict how each person will react. In the midst of a crisis where we are seeing young Granite Staters dying from illegal drugs, attempts by the legislature to legalize more of them, are in the opinion of the majority, drastically out of touch with what the majority of our constituents expect from us. **Vote 17-3.**

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

February 24, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 328-FN,

AN ACT an act legalizing certain controlled substances for persons 21 years of age or older. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. Jonah Wheeler

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 328-FN
Title:	an act legalizing certain controlled substances for persons 21 years of age or older.
Date:	February 24, 2023
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

The minority of the committees felt criminalization of these substances has caused more harm than help. The substances which would be legal if passed are colloquially known as psychedelics. These substances have shown promise in addressing trauma, mental health crises, and no evidence suggests an addictive nature to them. In fact, the committee heard testimony that the substances legalized in this bill helped individuals overcome addiction.

Rep. Jonah Wheeler
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 328-FN, an act legalizing certain controlled substances for persons 21 years of age or older.
OUGHT TO PASS.

Rep. Jonah Wheeler for the **Minority** of Criminal Justice and Public Safety. The minority of the committees felt criminalization of these substances has caused more harm than help. The substances which would be legal if passed are colloquially known as psychedelics. These substances have shown promise in addressing trauma, mental health crises, and no evidence suggests an addictive nature to them. In fact, the committee heard testimony that the substances legalized in this bill helped individuals overcome addiction.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 328-FN

BILL TITLE: an act legalizing certain controlled substances for persons 21 years of age or older.

DATE: January 26, 2023

LOB ROOM: 202-204 **Time Public Hearing Called to Order:** 3:02 p.m.

Time Adjourned: 3:13 p.m.

Committee Members: Reps. Roy, Rhodes, A. Murray, Pratt, Sytek, Proulx, Janvrin, D. Mannion, Reid, Stone, Tenczar, Harriott-Gathright, Meuse, Bouldin, Bradley, N. Murphy, R. Newman, Newell, Selig and Wheeler

Bill Sponsors:
Rep. Verville

TESTIMONY

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

Rep Rhodes introduces the bill for Rep Verville

Dr Joe Hannon

- Supports the bill
- This bill addresses psychedelic substances which are generally not considered addictive. No withdrawal effects or impulse desires, the only potential negative is it is possible to develop a tolerance and need to increase the amount of potency used. LSD is the only new synthetic drug on this list, the rest have been around for centuries. Schedule 1 drug definition states that the drug has no medicinal value and high potential for abuse, neither of which applies to psychedelics.

Derek Januzewski

- Supports the bill
- Alcoholics Anonymous was built on the foundation of a spiritual awakening, the founder of which had his spiritual experience on LSD. It is the most successful recovery program in existence. 50-150 micrograms is the average dose, no recorded death but 14,000 micrograms would be the least amount necessary for an overdose. In use since 1943. Psilocybin treats various addiction and mental health issues successfully. 19,000 micrograms for an overdose for a 150 pound person, which is 60 pounds of mushrooms. Almost impossible. These are psychedelics, not stimulants or opiates. These drugs aren't destroying our country, they are not a public safety issue, it's actually a public health issue.
- Chairman Roy asks if LSD can cause loss of brain cells, Januzewski says no

Respectfully submitted,

Rep. Alissandra Murray, Clerk

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB328 on 2023-
Support: 6 Oppose: 4 Neutral: 1 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>?</u>
Castrucci, Dianne	Laconia, NH castrucci.dianne@gmail.com	A Member of the Public	Myself	Oppose	No	No	1
Creem, Jeffrey	Nashua, NH jeff@thecreems.com	A Member of the Public	Myself	Support	No	No	1
O'Blenis, John	raymond, NH oblenis3@gmail.com	A Member of the Public	Myself	Oppose	No	No	1
Medeiros, Jesse	Plainfield, NH bgtrck458@gmail.com	A Member of the Public	Myself	Support	No	No	1
Karney, Stephen	Amherst, NH stephenakarney@gmail.com	A Member of the Public	Myself	Support	No	No	1
Baxter-Rogers, Cymande	South Tamworth, NH cymande76@gmail.com	A Member of the Public	Myself	Neutral	No	No	1
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Oppose	No	No	1
Pierre, Sandra	Marlow, NH spierre@mailbox.org	An Elected Official	Myself	Support	No	No	1
Dunn, Robert	Manchester, NH rdunn@rcbm.org	A Lobbyist	Roman Catholic Bishop of Manchester	Oppose	No	No	1
Homer, Brian	Stratford, NH bpnaxhomep@gmail.com	A Member of the Public	Myself	Support	No	No	1
Alleman, Bill	Weare, NH gencourt@allemanse.com	A Member of the Public	Myself	Support	No	No	1

January 24, 2023

RE: HB 328

As a New Hampshire citizen and mental healthcare provider, I appreciate the effort to reduce state and citizen burden of criminal pursuit of the possession of small amounts of hallucinogenic substances. As we embark on this important conversation however, I'd advise that the committee consult the Native American Church of North America as soon as possible and regularly to discuss legality and ethics around the inclusion of peyote in legislation of this nature. Peyote possession and use is already protected for members of the Native American Church per the American Indian Religious Freedom Act.

My concern is that peyote is a highly vulnerable species and decriminalization efforts, however well meaning, only further negatively impact its populations, habitat and traditional Native American practitioners. The cactus has been used for centuries by indigenous people for religious and medicinal purposes. However, due to over-harvesting and habitat destruction, peyote is considered an endangered species. Decriminalizing the use of peyote could potentially lead to an increase in demand and further harm to the already-endangered cactus. Therefore, it would be important to consider the potential impact on the species before making a decision on decriminalization. Additionally, it is important to consider and respect the cultural significance of peyote to indigenous communities and the rights of these communities in the decision making process.

Thank you for considering this perspective as you proceed.

Cymande Baxter-Rogers

Dianne Castrucci

Please do not pass this bill. I think it will be detrimental to our communities and residents.

Sandra Pierre

It's not the state government's job to decide what substances people may use for religious, medicinal, or recreational purposes. Please support this bill and decriminalize these substances!

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 328-FN

BILL TITLE: an act legalizing certain controlled substances for persons 21 years of age or older.

DATE: February 24, 2023

LOB ROOM: 202-204

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Pratt

Seconded by Rep. D. Mannion

Vote: 17-3

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Alissandra Murray, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 9:55:43 AM
Roll Call Committee Registers
Report

2023 SESSION

Criminal Justice and Public Safety

Bill #: 328-FN Motion: ITL AM #: _____ Exec Session Date: 2/2nd/23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Roy, Terry Chairman	17		
Rhodes, Jennifer M. Vice Chairman	1		
Pratt, Kevin M.	2		
Sytek, John Lynn	3		
Proulx, Mark L.	4		
Janvrin, Jason A.	5		
Mannion, Dennis	6		
Reid, Karen A	7		
Stone, Jonathan F.	8		
Tenczar, Jeffrey	9		
Harriott-Gathright, Linda C.	10		
Meuse, David	11		
Bouldin, Amanda C.		1	
Bradley, Amy Clerk	12		
Murphy, Nancy A.	13		
Newman, Ray E.	14		
Murray, Alissandra		2	
Newell, Jodi K	15		
Selig, Loren Brennan	16		
Wheeler, Jonah O		3	
TOTAL VOTE:	17	3	