

## Senate Judiciary Committee

*Jennifer Horgan 271-3092*

**HB 640-FN**, relative to the penalties for possession of marijuana.

**Hearing Date:** April 11, 2017

**Time Opened:** 9:20 a.m.

**Time Closed:** 11:11 a.m.

**Members of the Committee Present:** Senators Carson, Lasky, French, Gannon and Hennessey

**Members of the Committee Absent :** None

**Bill Analysis :** This bill reduces the penalty for possession of one ounce or less of marijuana or marijuana-infused products by a person 21 years of age or older to a violation.

### **Sponsors :**

Rep. Cushing

Rep. Eaton

Rep. McGuire

Rep. Murphy

Rep. Grassie

Rep. Sapareto

Rep. W. Pearson

Rep. Lovejoy

Sen. Reagan

Sen. Innis

Sen. Fuller Clark

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**Who supports the bill:** Representative Cushing; Senator Fuller Clark; Senator Innis; Representative Messmer; Representative Sapareto; Representative Edwards; Representative Horrigan; Dan McGuire (NH Liberty Alliance); Matt Simon (Marijuana Policy Project); Devon Chaffee (American Civil Liberties Union); Ian Freeman (NH Liberty Party); Heather Brown (NH Cannabis Advocacy and Education); Christopher Waid; Dent Samantgo; Robert Lamontagne; Bill Allenman; Paul Twomey; David Crawford; William Rodriguez; Jamie Cox; Will Anderson; Kerry Ann Garnick; Erica Golter; Eric Hatfield; Robert Reinhard; Justin Eaton; Frank Sylvester; Casey Brown; Rick Naya; Joseph Lachance; Jen St. Laurant; Cheryl Brown; Michael A. Bisson

**Who opposes the bill:** Senator Gannon; Senator Guida; Sgt. Chris Huse (Department of Safety); Richard Crate (NH Chiefs of Police)

**Who is neutral on the bill:** Senator Bradley; Mary Ann Dempsey (NH Judicial Branch); Kate Frey (New Futures)

### **Summary of testimony presented in support:**

#### **Representative Cushing**

- This decriminalizes possession of 1 oz or less of marijuana.
- This is a product of accumulative experience and a consultative process last summer, which involved the opponents of reform.
- The state spends about \$6.5 million in prosecuting marijuana cases.
- Many believe those funds would be better used for dealing with significant drug problems and opioid addictions.
- The bill provides for escalating fines and treats the possession of marijuana as a violation, similar to traffic violations.

- Maine and Massachusetts have legalized recreational marijuana.
- The trend nationwide is legalization and NH should at least get to a position of not criminalizing individuals for marijuana possession.
- Senator Gannon asked about the 1 oz, which equals 48 joints. Why is this decriminalizing such a large amount?
  - Does not think that is a high amount and it is consistent with what other states have done. Does not know how many joints are in an oz, but it is recognized as a personal use amount. 40 years ago the House passed a bill decriminalizing an oz.
- Senator Gannon asked if there is judge's discretion on the 2<sup>nd</sup> and 3<sup>rd</sup> offenses to go to a misdemeanor.
  - No, it is an escalating fine and the violation goes away after a certain amount of time.
- Senator Carson asked if he would be amenable to adding a reporting requirement regarding the number of tickets and fines.
  - Has no objection to that.

#### **Representative Sapareto**

- The penalty assessments makes the fine substantial.
- Shared his son's personal experience and how he could have had his future ruined.
- This law is ruining NH's youth's future.
- Shared his experience doing ride alongs; explained that if at every stop where there was some type of paraphernalia they made an arrest, all the officers would do is drive back and forth from jail.
- Since Maine has legalized recreational use, every person driving product into Maine would be in violation, which is a violation of the constitutional interstate trade.

#### **Matt Simon** (Marijuana Policy Project) (provided written testimony)

- There was no testimony against this bill in the House.
- 90% of the House voted to pass this bill and has sent bills like this eight times.
- Understands that law enforcement is opposed, but in 2014, one of the best known police chiefs in the state supported decriminalization.
- Maine decriminalized 40 years ago; if it works in Maine and it can work here.
- Worked with legislators in Vermont in 2013 to pass a decriminalization bill and in the first year there was an 80% reduction in marijuana arrests.
- VT chiefs now have no objections and are spending less time on these issues, allowing them do things the public supports.
- Would challenge the Committee to talk to people in neighboring states, which have already done this.
- The American Academy of Pediatrics endorses decriminalization and they note that this has not lead to increased youth rates.
- The reality is that marijuana is widely available and widely used.
- It is objectively less harmful than alcohol.
- There have been four statewide polls in a row showing the majority of NH residents supporting legalization.
- Open to working on this.
- To make the second offense a criminal offense is not decriminalization.
- Is this a government for the people or for the police chiefs?
- Senator Hennessey asked about the data supporting either side.
  - There has been a concerted effort over the past 70 years to demonize marijuana. The Office of National Drug Control Policy is required by their

authorization to oppose the legalization of any schedule one drug. The Rocky Mountain High Intensity Drug Trafficking Area Report is cherry-picked data and is propaganda.

**Devon Chaffee** (American Civil Liberties Union) (provided written testimony)

- This is the result of a lengthy process of negotiation between many stakeholders.
- Understands the desire to bring all stakeholders together, but Senator Bradley's amendment is not a compromise between all the stakeholders. The amendment is primarily coming from the chiefs because they want to continue to arrest people for marijuana possession.
- The bottom line is that, that amendment is not what decriminalization is and not what the vast majority of NH citizens want.
- Decriminalization means moving towards a simple fine, and not creating burdens on law enforcement or causing massive disruption for individuals.
- There are significant costs to NH's current policy, financial and human.
- Provided a breakdown of the financial costs of this policy.
- The enforcement of this falls predominately on minorities. If you are black you are 2.6x more likely to be arrested for marijuana possession than if you are white.
- These arrests do happen across the state and lives have been upended because of them.
- Shared the story of an elderly couple who had been convicted, one of whom was a former navy veteran with MS who used marijuana therapeutically, but illegally. They were evicted from their apartment for marijuana possession.
- Senator Carson asked if that couple lived in federally subsidized housing and therefore were subject to federal standards.
  - It may have been due to how their housing was subsidized, but the way that the police pursued the matter was because of NH's statutes on marijuana.
- Senator Carson pointed out that if they live in federally subsidized housing, NH has no control over that and decriminalization would not impact this.
  - The federal government does have its rules with federal housing. While those rules are set by federal government, the actions of NH's law enforcement are under state direction.
- These cases cost tens of thousands of dollars to prosecute and defend.
- Shared another story of an individual who was essentially homeless and was arrested for marijuana possession. That individual died of fentanyl overdoses in jail.
- In terms of the technical issues Senator Bradley brought up, the bill is written this way because ME and MA have legalized recreational use.
- Did not want to create an incentive to remove these products from their child proof and labeled packaging.
- This bill decriminalizes possession of those edibles for 21 or older.
- Does not believe it was the intent of the sponsor to not put a limit on the THC content.
- Provided an amendment that would limit THC infused products to 300mg.
- Would be open to having a discussion regarding having juveniles remain in juvenile court
- A vote for Senator Bradley's amendment is a vote against decriminalization.
- Senator Lasky asked if the 1342 amendment addresses her concerns.
  - Yes, it puts a very clear limit on infused products that have been legally purchased out of state. Doesn't want to create an incentive to remove the edibles from containers.
- Senator Lasky asked if the amendment clearly outlines that no more than 300mg is

decriminalized.

- Yes. The amount would be indicated on the packaging, helping law enforcement to be able to identify the level.

#### **Paul Tomey**

- Shared a story of an individual who had a service connected disability and did not want to take opioids. Qualified for the state's medicinal program, but could not get it because he went to the VA. Lebanon police found a small amount of marijuana in his possession and arrested him and voluntarily told his landlord. This gentleman was evicted from his home of 20 years and had no prior criminal record.
- Explained the costs and efforts involved in prosecuting that case.
- The police chiefs did not come to any of the meetings on this legislation over the summer and they did not come to the House hearing.
- Supports the 300mg limit.
- If the chiefs had come to the meetings to talk about the juvenile court issues, would have been happy to discuss it with them. The juvenile probation officers asked for the bill to be written this way.
- In terms of the police not being able to access the records roadside, will take their word on it.
- With this bill it is always a violation, but under Senator Bradley's amendment officers will have to take individuals to the station every time to determine what number offense it is.
- 72% of the people in NH think that arresting someone does more harm than marijuana use.
- Law enforcement officers will still have the authority to take incapacitated individuals into protective custody.
- Marijuana is sold in 1 oz quantities in MA and ME.
- It is still a personal amount and it is what most other states have adopted.
- There are some reasons to not do it in juvenile courts, and alcohol and drugs are done in the adult courts already; but open to changing it.
- If an individual goes to court without a lawyer, they will get a conviction, but if they have the money to get a lawyer they won't be convicted.
- This affects applying to schools, job opportunities, etc

#### **David Crawford**

- Shared his personal experience with marijuana.
- Shared the story of a friend with chronic pain who got in trouble for using marijuana and now cannot get housing. Has been homeless a lot.
- Minors should not get these charges on their records because it hinders their whole life.

#### **William Rodriguez**

- Asked about violation punch tickets and if there could be an ability to prepay for violations.
- Spoke of recreational marijuana use in ME and how this will increase their economic efforts.

#### **Kerry Ann Garnick**

- Is a recovering addict and shared personal experience with drugs.
- Marijuana is not a harmless drug and has been addicted to marijuana.
- States who have legalized medicinal marijuana has seen a 33% decrease in opioid deaths
- Has lost around 20 friends this year due to heroin overdoses.

- States that legalized/decriminalized have seen lower usage of other drugs.
- There have been zero recorded marijuana overdose deaths.
- NH's treatment centers have huge wait lists and when talking about opioid abuse, a two week wait time is the difference between life and death.
- Sees all this money being spent on drug enforcement when drug treatment is what actually helps society.
- Portugal decriminalized all drugs and the statistics showed a 70% decrease in usage because they focused all of those resources that were used in enforcement on treatment.
- It costs less to keep someone in treatment for 30 days then to keep them in jail for 30 days.
- Senator Gannon asked if marijuana was their first drug.
  - Started on prescription medication and then went to marijuana. Found heroin through connections with marijuana dealers and does not think would have tried heroin had marijuana been legal.

#### **Ian Freeman (NH Liberty Party)**

- Spoke of a former roommate who used marijuana to get off of an opioid addiction.
- Marijuana does not have physical addiction properties.
- This has ruined people's lives.
- It is a weed and it has amazing medicinal qualities.
- The people of NH are friendly to marijuana.
- The fact that marijuana is illegal does not prevent people from using it.
- Increasing the fines is not going to dissuade people; it is just going to make them poorer.
- Maine and Massachusetts did ballot measures and NH does not have ballot measures.
- Why not just strike the prohibition all together?
- This will free up police time so they can focus on crimes with real victims.

#### **Heather Brown**

- It is high time NH follow suit and has some pride in its first in the nation status.
- Alcohol is much more harmful than cannabis.
- Has been arrested for possession of cannabis and that arrest did not change her behavior.
- Was on over 50,000mg of medication/27 pills a day, and now does not have to take any medication.
- Started utilizing cannabis when diagnosed with cervical cancer. The cannabis slowed the growth of the cancer and it even started to go away.
- Recognizes there is a medical program, but it is so limited, thousands of people cannot utilize it.
- Is more concerned about children's ability to access alcohol and prescription medications than cannabis.
- Cannabis can end addiction and help with medical problems, and this will give police more time to focus on violent crimes.
- Legalizing marijuana would boost tourism and economic efforts.

#### **Summary of testimony presented in opposition :**

##### **Senator Gannon**

- Met with every one of his police chiefs in the past two weeks to ask their opinion on this.

- Every chief from his district were pretty much all in agreement that marijuana is a gateway drug, decriminalizing it will increase use, and this is lowering the bar for more drugs.
- Marijuana is the most common found drug.
- Thinks the quantity is high even with ½ oz, ie 24 joints.
- Would much rather have it start with 8-10 joints.

**Chief Richard Crate** (NH Association of Chiefs of Police) (provided written testimony)

- Has seen the negative effects of drugs, even marijuana, have on our citizens.
- The bill as written is very confusing and there are a lot of unforeseen consequences.
- 1 oz is a large amount and is over 50 joints.
- Anyone 21 years of age or older possessing any amount of out-of-state products would only be committing a violation. An individual could load up their car with product.
- Juveniles will be summoned to adult court systems, which is wrong for our citizens.
- If a child fails to appear under the current version, the judge would issue a bench warrant for that child's arrest.
- The bill prevents police from taking people into custody. They may provide a false name and there is no way to verify that.
- There is no other statute that prohibits police from bringing someone in.
- The fine is so low that it is cheaper to pay the fine then go to a diversion program.
- Worked on Senator Bradley's amendment and believes it satisfies the intent of decriminalization.
- Marijuana is harmful and unhealthy, and doesn't want to send the wrong message.
- The \$300 fine is consistent with the alcohol fine.
- The loss of license of someone transporting marijuana is what is already written in statute.
- Senator Hennessey asked if other things in Senator Bradley's amendment are similar to alcohol penalties.
  - Alcohol is a violation already and this is consistent with that.
- Senator Hennessey asked if prohibiting from taking individuals into custody and the juvenile court aspect are different from the alcohol statute.
  - In the House passed version, yes. The current version would be prohibit officers from bringing someone in. As a parent would not want that at all if his child was incapacitated.

**Neutral Information Presented:**

**Senator Bradley** (provided written testimony)

- Provided an amendment to the Committee.
- The amendment reduces the amount from 1 oz to ½ oz.
- When decriminalizing something it should be a somewhat smaller amount.
- The amendment also increases the fine from \$100 to \$300 in order to increase individuals going to a diversion program.
- The House passed version would not limit the amount for marijuana infused products, puts juveniles in adult courts instead of juvenile courts, and prohibits a law enforcement officers from taking someone into custody even if it is warranted.
- There is no way for law enforcement to know what offense number an individual is on because records like that are not available roadside.
- There are also new definitions in the bill that conflict with current definitions.
- This amendment is an attempt to seek a compromise between opposing sides.

- Senator Hennessey asked the \$300 fine.
  - \$300 is to ensure people take notice of the fact that possession is an issue and encourage diversion. \$100 is significantly lower than the cost of a diversion program, which is \$200 and 1oz of marijuana is sold for \$200-\$400.
- Senator French asked where the fine goes.
  - Senator Carson pointed out that it is put into the Alcohol Fund.
- Senator French asked if a conviction results in a loss of license.
  - That could be right.
- Senator Gannon asked if this removes the judge's discretion on a second offense.
  - It would be a misdemeanor on the second offense.

**Mary Ann Dempsey** (NH Judicial Branch)

- In the House passed bill, possession by a minor would be a violation and therefore, under RSA 169-B:32, it would be addressed outside of the juvenile court system.
- Would ask to amend it to deal with these offenses in the same fashion alcohol and motor vehicles are.
- Senator Bradley's amendment would keep it as a misdemeanor for juveniles, which would be in juvenile court and order a Substance Abuse Assessment within 60 days after the adjudication.
- Juvenile matters have to be addressed in a shorter time frame than the 60 day period. The timeframe between adjudication and disposition is either 21 days if a juvenile is being held or 30 days if not.
- Would ask the Substance Abuse Assessment, if ordered, be done in a timeframe that helps fit within the statutory requirements for when a court needs to fully dispose of a juvenile matter.
- Senator Lasky asked if in the House passed version, the first offense would not be a court ordered offense.
  - It would not be addressed in a juvenile court; it would be the same process as it is for any other individual. The original bill still keeps marijuana infused products as a misdemeanor, so that would go into the juvenile court and does not order a Substance Abuse Assessment, and therefore the 60 day timeframe would not be an issue in that instance.
- Senator Lasky asked if there would be no record for a juvenile in the bill.
  - Correct
- Senator Carson asked, on the Senator Bradley's amendment on page 2 line 16, if the 60days is not consistent with current practice and if it must be 21 days if the juvenile is being held and 30 days if not.
  - Correct, RSA 169-B:16 sets out the timeframe for when a juvenile matter has to be addressed.
- Senator Gannon asked if the juvenile level is just about rehabilitation and no level of punishment.
  - Correct.

**Kate Frey** (New Futures) (provided written testimony)

- Not taking a position on the bill, but is comfortable with the language.
- Will continue to voice concerns regarding the negative impact of marijuana, especially for youth and brain development.
- The potency of marijuana has increased.
- The relationship between the perceived risk of harm and increased rate of drug use has been well established by public health researchers.
- Through the course of discussions over the summer with the ACLU and proponents

of decriminalization, they identified common ground with advocates.

- This is sensible marijuana policy reform to reduce criminal penalties that can lead to a lifetime of harsh consequences and to address social and racial inequities in NH's criminal justice system.
- Attempts to decriminalize small amounts must be done in conjunction with efforts to prevent use and promote early screening and treatment.
- Limiting minors' access is important both to protect young children from accidental ingestion and to prevent use among adolescents.
- This balances public health and equity principles.
- Number one priority will always be the impact and access for youth.
- There must always be a built in risk assessment when dealing with decriminalization, which is in the House passed version.
- Should also have a prevention component and a sustainable funding source for prevention programs.
- Due to the increase in potency, infused and edible products must also be addressed.
- In order to support equity, penalties should reflect equitable treatment and not be overly excessive.
- If the legislation were amended away from prevention principles, New Futures would have to oppose the bill.
- Did review Senator Bradley's amendment and would continue to look at any amendment to ensure prevention principles are included.
- Senator Carson asked if marijuana infused products are labeled.
  - If they are within the therapeutic cannabis program or if they were purchased out-of-state legally they should be labeled with the content level.
- Senator Carson asked if a juvenile brings an edible back into the state and they get stopped, the police will be able to look at the label.
  - Yes, but it would still be a misdemeanor if a youth has that kind of product.

**Future Action:** Pending

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Date Hearing Report completed: April 14, 2017