

CHAPTER 248
HB 640-FN - FINAL VERSION

05/11/2017 1619s
22Jun2017... 2217EBA

2017 SESSION

17-0069
04/03

HOUSE BILL ***640-FN***

AN ACT relative to the penalties for possession of marijuana.

SPONSORS: Rep. Cushing, Rock. 21; Rep. Eaton, Ches. 3; Rep. McGuire, Merr. 29; Rep. Murphy, Hills. 7; Rep. Grassie, Straf. 11; Rep. Sapareto, Rock. 6; Rep. W. Pearson, Ches. 16; Rep. Lovejoy, Rock. 36; Sen. Reagan, Dist 17; Sen. Innis, Dist 24; Sen. Fuller Clark, Dist 21

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

 This bill reduces the penalty for possession of 3/4 ounce or less of marijuana, or 5 grams or less of hashish to a violation.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to the penalties for possession of marijuana.

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

1 248:1 Statement of Purpose. The general court finds that:

2 I. Reducing the penalty for possessing 3/4 of an ounce or less of marijuana to a violation and
3 allowing offenders to pay fines by mail will result in less time and resources spent on such cases,
4 allowing police and courts to spend more time and resources dealing with serious crimes.

5 II. A criminal penalty accompanying a conviction for possession of 3/4 of an ounce or less of
6 marijuana can lead to a lifetime of harsh consequences. These may include denial of student
7 financial aid, housing, employment, and professional licenses. Reducing this penalty to a violation
8 will significantly reduce the number of New Hampshire residents who receive criminal records for
9 possessing 3/4 of an ounce or less of marijuana.

10 III. Marijuana policy reforms that reduce criminal penalties for the possession of 3/4 of an
11 ounce or less of marijuana have the potential to address social and racial inequities in the New
12 Hampshire criminal justice system.

13 IV. In its 2015 policy, the American Academy of Pediatrics recommended that penalties for
14 marijuana-related offenses be reduced to lesser criminal charges or civil penalties. The Academy
15 also stated that efforts to decriminalize marijuana should take place in conjunction with efforts to
16 prevent marijuana use and promote early screening and treatment of adolescents with marijuana
17 use problems.

18 V. Limiting minors' access to marijuana and marijuana-infused products is important both
19 to protect young children from accidental ingestion and to prevent marijuana use among
20 adolescents.

21 248:2 New Sections; Controlled Drug Act; Personal Possession of Marijuana. Amend RSA 318-
22 B by inserting after section 2-b the following new sections:

23 318-B:2-c Personal Possession of Marijuana.

24 I. In this section:

25 (a) "Marijuana" includes the leaves, stems, flowers, and seeds of all species of the plant
26 genus cannabis, but shall not include the resin extracted from any part of such plant and every
27 compound, manufacture, salt, derivative, mixture, or preparation from such resin including
28 hashish, and further, shall not include the mature stalks of such plant, fiber produced from such
29 stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt,

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1 derivative, mixture, or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of
2 such plant which is incapable of germination.

3 (b) "Personal-use amount of a regulated marijuana-infused product" means one or more
4 products that is comprised of marijuana, marijuana extracts, or resins and other ingredients and is
5 intended for use or consumption, such as, but not limited to, edible products, ointments, and
6 tinctures, which was obtained from a state where marijuana sales to adults are legal and regulated
7 under state law, and which is in its original, child-resistant, labeled packaging when it is being
8 stored, and which contains a total of no more than 300 milligrams of tetrahydrocannabinol.

9 II. Except as provided in RSA 126-X, any person who knowingly possesses 3/4 of an ounce
10 or less of marijuana, including adulterants or dilutants, shall be guilty of a violation, and subject to
11 the penalties provided in paragraph V.

12 III. Except as provided in RSA 126-X, any person who knowingly possesses 5 grams or less
13 of hashish, including adulterants or dilutants, shall be guilty of a violation, and subject to the
14 penalties provided in paragraph V.

15 IV. Except as provided in RSA 126-X, any person 21 years of age or older possessing a
16 personal-use amount of a regulated marijuana-infused product shall be guilty of a violation, and
17 subject to the penalties provided in paragraph V. Persons 18 years of age or older and under 21
18 years of age who knowingly possess marijuana-infused products shall be guilty of a misdemeanor.

19 V.(a) Except as provided in this paragraph, any person 18 years of age or older who is
20 convicted of violating paragraph II or III, or any person 21 years of age or older who is convicted of
21 violating paragraph IV shall be subject to a fine of \$100 for a first or second offense under this
22 paragraph, or a fine of up to \$300 for any subsequent offense within any 3-year period; however,
23 any person convicted based upon a complaint which alleged that the person had 3 or more prior
24 convictions for violations of paragraph II, III or IV, or under reasonably equivalent offenses in an
25 out-of-state jurisdiction since the effective date of this paragraph, within a 3-year period preceding
26 the fourth offense shall be guilty of a class B misdemeanor. The offender shall forfeit the
27 marijuana, regulated marijuana-infused products, or hashish to the state. A court shall waive the
28 fine for a single conviction within a 3-year period upon proof that person has completed a substance
29 abuse assessment by a licensed drug and alcohol counselor within 60 days of the conviction. A
30 person who intends to seek an assessment in lieu of the fine shall notify the court, which shall
31 schedule the matter for review after 180 days. Should proof of completion of an assessment be filed
32 by or before that time, the court shall vacate the fine without a hearing unless requested by a party.

33 (b) Any person under 18 years of age who is convicted of violating paragraph II or III
34 shall forfeit the marijuana or hashish and shall be subject to a delinquency petition under RSA 169-
35 B:6.

36 VI.(a) Except as provided in this section, no person shall be subject to arrest for a violation
37 of paragraph II, III, or IV and shall be released provided the law enforcement officer does not have

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1 lawful grounds for arrest for a different offense.

2 (b) Nothing in this chapter shall be construed to prohibit a law enforcement agency
3 from investigating or charging a person for a violation of RSA 265-A.

4 (c) Nothing in this chapter shall be construed as forbidding any police officer from
5 taking into custody any minor who is found violating paragraph II, III, or IV.

6 (d) Any person in possession of an identification card, license, or other form of
7 identification issued by the state or any state, country, city, or town, or any college or university,
8 who fails to produce the same upon request of a police officer or who refuses to truthfully provide
9 his or her name, address, and date of birth to a police officer who has informed the person that he or
10 she has been found to be in possession of what appears to the officer to be 3/4 of an ounce or less of
11 marijuana, a personal-use amount of a regulated marijuana-infused product, or 5 grams or less of
12 hashish, may be arrested for a violation of paragraph II, III, or IV.

13 VII. All fines imposed pursuant to this section shall be deposited into the alcohol abuse
14 prevention and treatment fund established in RSA 176-A:1 and utilized for evidence-informed
15 substance abuse prevention programs.

16 VIII.(a) No record that includes personally identifiable information resulting from a
17 violation of this section shall be made accessible to the public, federal agencies, or agencies from
18 other states or countries.

19 (b) Every state, county, or local law enforcement agency that collects and reports data
20 for the Federal Bureau of Investigation Uniform Crime Reporting Program shall collect data on the
21 number of violations of paragraph II, III, or IV. The data collected pursuant to this paragraph shall
22 be available to the public. A law enforcement agency may update the data annually and may make
23 this data available on the agency's public Internet website.

24 318-B:2-d Plea by Mail.

25 I. Any person 18 years of age or older who is charged with a violation of RSA 318-B:2-c, II,
26 III, or IV may enter a plea of guilty, nolo contendere, or not guilty, by mail in a circuit court, district
27 division.

28 II. Such defendant shall receive, in addition to the summons, a fine notice entitled "Notice
29 of Fine" which shall contain the amount of the fine for a violation of RSA 318-B:2-c, II, III, or IV. A
30 defendant who is issued a summons and notice of fine and who wishes to plead guilty or nolo
31 contendere shall enter his or her plea on the summons and return it with payment of the fine
32 within 30 days of the date of the summons. Payment by credit card may be accepted in lieu of cash
33 payment.

34 III. If the defendant wishes to enter a plea of not guilty, he or she shall enter such plea on
35 the summons and return it within 30 days of the date of the summons. The circuit court, district
36 division shall schedule a trial.

37 IV. Whenever a defendant willfully fails to pay a fine in connection with a conviction for a

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violation of RSA 318-B:2-c, II, III, or IV or payment of such fine cannot be collected, the defendant shall be defaulted and the court may impose an additional fine of \$100.

318-B:2-e Negligent Storage of Marijuana-Infused Products.

I. In addition to any other penalties provided for by law, any person who negligently stores marijuana-infused products, where the negligent storage causes such products to be possessed by a person under 18 years of age, shall be guilty of a misdemeanor. The storing of marijuana-infused products obtained legally in any state in an original childproof container shall be prima facie evidence that a person did not act negligently. Failure to store marijuana-infused products obtained legally in any state in an original childproof container shall be prima facie evidence of negligence.

II. As used in this section, "marijuana-infused products" means products that are comprised of marijuana, marijuana extracts, or resins that have been combined with other ingredients and are intended for use or consumption, including but not limited to, edible products, drinks, ointments, and tinctures.

248:3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II to read as follows:

II. Any person who knowingly or purposely obtains, purchases, transports, or possesses actually or constructively, or has under his *or her* control, any controlled drug or controlled drug analog, or any preparation containing a controlled drug or controlled drug analog, except as authorized in this chapter, shall be sentenced as follows, except as otherwise provided in this section:

(a) In the case of a controlled drug or its analog, classified in schedules I, II, III, or IV, other than those specifically covered in this section, the person shall be guilty of a class B felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be imposed. If any person commits such a violation after one or more prior offenses as defined in RSA 318-B:27, such person shall be guilty of a class A felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of up to \$50,000 may be imposed[;].

(b) In the case of a controlled drug or its analog classified in schedule V, the person shall be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more than \$15,000, or both. If a person commits any such violation after one or more prior offenses as defined in RSA 318-B:27, such person shall be guilty of a class B felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$25,000 may be imposed[;].

~~(c) [In the case of more than 5 grams of hashish, the person shall be guilty of a misdemeanor, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than \$5,000 may be imposed.]~~

~~(d)~~ In the case of *more than 3/4 ounce of* marijuana[;] *or more than 5 grams of hashish*, including any adulterants or dilutants, the person shall be guilty of a misdemeanor. *In*

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1 *the case of marijuana-infused products possessed by persons under the age of 21 or*
2 *marijuana-infused products as defined in RSA 318-B:2-e, other than a personal-use*
3 *amount of a regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b), that*
4 *are possessed by a person 21 years of age or older, the person shall be guilty of a*
5 *misdemeanor.*

6 [(e)] (d) In the case of *3/4 ounce or less of marijuana* or 5 grams or less of hashish,
7 *including any adulterants or dilutants*, the person shall be guilty of a ~~[class A misdemeanor]~~
8 *violation pursuant to RSA 318-B:2-c. In the case of a person 21 years of age or older who*
9 *possesses a personal-use amount of a regulated marijuana-infused product as defined in*
10 *RSA 318-B:2-c, I(b), the person shall be guilty of a violation pursuant to RSA 318-B:2-c.*

11 248:4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, III(a) to read as follows:

12 (a) *Except as provided in RSA 318-B:2-c*, controls any premises or vehicle where he
13 *or she* knows a controlled drug or its analog is illegally kept or deposited;

14 248:5 Controlled Drug Act; Penalties. Amend RSA 318-B:26, XIII to read as follows:

15 XIII. Any person who violates any provision of this chapter shall be fined a minimum of
16 \$350 for a first offense and \$500 for a second or subsequent offense, except that any person who
17 violates the provisions of RSA 318-B:26, II[(d)] (c) or RSA 318-B:26, II[(e)] (d) shall be fined \$350.
18 *This paragraph shall not apply to violations of RSA 318-B:2-c.*

19 248:6 Controlled Drug Act; Prior Offenses. Amend RSA 318-B:27 to read as follows:

20 318-B:27 Prior Offenses. In the case of any person charged with a violation of any provision of
21 this chapter or RSA 318-D, who has previously been convicted of a *misdemeanor or felony level*
22 violation of the laws of the United States or any state, territory or the District of Columbia relating
23 to controlled drugs as defined in this chapter, such previous conviction shall be deemed a prior
24 offense. *A prior conviction for a violation level offense shall not be deemed a prior offense,*
25 *except as provided in RSA 318-B:2-c, V(a).*

26 248:7 Other Alcohol or Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as
27 follows:

28 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly
29 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug
30 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her
31 license shall be revoked or his or her right to drive denied for a period of 60 days and at the
32 discretion of the court for a period not to exceed 2 years. *This section shall not apply to the*
33 *possession of marijuana or hashish as provided in RSA 318-B:2-c, or a personal-use*
34 *amount of a regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b).*

35 248:8 Delinquent Children; Definitions. Amend RSA 169-B:2, IV to read as follows:

36 IV. "Delinquent" means a person who has committed an offense before reaching the age of
37 18 years which would be a felony or misdemeanor under the criminal code of this state if committed

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1 by an adult, ***or which is a violation of RSA 318-B:2-c, II or III***, and is expressly found to be in
2 need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.

3 248:9 New Paragraph; Delinquent Children; Mental Health and Substance Abuse Evaluation.
4 Amend RSA 169-B:21 by inserting after paragraph II the following new paragraph:

5 III. In the case of a minor found guilty of possession of marijuana or hashish, the court,
6 finding that a minor has committed the alleged offense, shall refer the minor for a substance abuse
7 assessment to be completed prior to the dispositional hearing. The court may waive the
8 requirement of an assessment if it has access to a similar assessment completed in the previous year
9 or, based on substantial evidence, the court does not find there is a need for an assessment. The
10 assessment shall be completed by a licensed drug and alcohol counselor. In the event the parent,
11 guardian, or person having custody of the child is of limited means, the evaluation shall be provided
12 for free or at reduced cost. The results of the assessment shall be submitted to the court and, if
13 indicated, the court shall order that the minor obtain appropriate treatment. The minor shall
14 furnish the court with evidence of participation and completion of the substance abuse assessment.

15 248:10 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 18, 2017

Effective Date: September 16, 2017

