

SB 233-FN - AS INTRODUCED

2017 SESSION

17-0934

04/10

SENATE BILL

233-FN

AN ACT relative to the legalization and regulation of marijuana and establishing a committee to study the legalization of marijuana.

SPONSORS: Sen. Woodburn, Dist 1; Sen. Reagan, Dist 17; Sen. Feltes, Dist 15; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5; Rep. Cushing, Rock. 21; Rep. Murphy, Hills. 7

COMMITTEE: Judiciary

ANALYSIS

This bill legalizes the personal use of up to one ounce of marijuana by persons 21 years of age or older and establishes a committee to study the legalization and regulation of marijuana.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the legalization and regulation of marijuana and establishing a committee to study the legalization of marijuana.

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

1 1 Purpose and Findings. The general court hereby finds that:

2 I. In the interest of allowing law enforcement to focus on violent and property crimes,
3 generating revenue for education and other public purposes, and individual freedom, the people of
4 the state of New Hampshire find and declare that the use of marijuana should be legal for a person
5 21 years of age or older and taxed in a manner similar to alcohol.

6 II. In the interest of the health and public safety of our citizenry, the people of the state of
7 New Hampshire further find and declare that marijuana should be regulated in a manner similar to
8 alcohol so that:

9 (a) Individuals will have to show proof of age before purchasing marijuana;

10 (b) Selling, distributing, or transferring marijuana to minors and other individuals
11 under the age of 21 shall remain illegal;

12 (c) Driving under the influence of marijuana shall remain illegal;

13 (d) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of
14 marijuana; and

15 (e) Marijuana sold in this state will be tested, labeled, and subject to additional
16 regulations to ensure that consumers are informed and protected.

17 (f) In the interest of enacting rational policies for the treatment of all variations of the
18 cannabis plant, the state of New Hampshire further finds and declares that hemp should be
19 regulated separately from strains of cannabis with higher delta-9 tetrahydrocannabinol (THC)
20 concentrations.

21 III. In the interest of the health and public safety of our citizenry, the people of the state of
22 New Hampshire further find and declare that before implementing a system of regulation and
23 control for adult use of marijuana, a legislative committee should study other states' approaches to
24 marijuana regulation and make recommendations designed to best advance individual liberty,
25 public health, and public safety, while creating jobs and generating new revenue.

26 2 New Chapter; Regulation of Marijuana. Amend RSA by inserting after chapter 318-E the
27 following new chapter:

28 CHAPTER 318-F

29 REGULATION OF MARIJUANA

30 318-F:1 Personal Use of Marijuana. Except as otherwise provided in this chapter, the

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1 following acts if undertaken by a person 21 years of age or older, shall not be illegal under
2 New Hampshire law or the law of any political subdivision of the state or be a basis for seizure or
3 forfeiture of assets under New Hampshire law:

4 I. Possessing, consuming, using, displaying, obtaining, purchasing, or transporting
5 marijuana accessories, or marijuana in the amount of one ounce or less including up to 5 grams of
6 hashish, and the equivalent amount in marijuana products.

7 II. Possessing, growing, processing, or transporting not more than 6 marijuana plants, with
8 3 or fewer being mature, flowering plants, and possession of the marijuana produced by the plants
9 on the premises where the plants were grown.

10 III. Transferring one ounce or less of marijuana and up to 6 immature marijuana plants to
11 a person who is 21 years of age or older without remuneration.

12 IV. Controlling property where actions that described by this section occur; and

13 V. Assisting another person who is 21 years of age or older in any of the described in this
14 section.

15 318-F:2 Restrictions on Personal Cultivation; Penalty.

16 I. Except as allowed under RSA 126-X, no person who is 21 years of age or older shall
17 cultivate marijuana plants except as provided in this section.

18 II. Marijuana plants shall not be cultivated in a location where the plants are subject to
19 public view without the use of binoculars, aircraft, or other optical aids.

20 III. A person who cultivates marijuana shall take reasonable precautions to ensure the
21 plants are secure from access by a person under 21 years of age. Cultivating marijuana in an
22 enclosed, locked space to which unauthorized persons do not have access, or other similar security
23 precautions, shall be prima facie evidence of reasonable precautions.

24 IV. Marijuana cultivation shall only occur on property the cultivator legally owns, leases, or
25 controls, or with the consent of the person who legally owns, leases, or controls the property.

26 V. A person who violates this section shall be guilty of a violation and may be fined not
27 more than \$750.

28 318-F:3 Public Smoking of Marijuana Prohibited; Penalty.

29 I. No person shall smoke marijuana in a public place.

30 II. A person who violates this section shall be guilty of a violation and may be punished by a
31 fine of not more than \$100.

32 318-F:4 Consuming Marijuana in a Moving Vehicle Prohibited; Penalty.

33 I. No person shall consume marijuana while operating or driving in a motor vehicle, boat,
34 vessel, aircraft, or other motorized device used for transportation.

35 II. A person who violates this section shall be guilty of a violation and may be punished by a
36 fine of not more than \$200 or have his or her driver's license suspended for up to 6 months, or both,
37 for the first violation.

38 III. A person who violates this section shall be guilty of a violation and may be punished by

1 a fine of not more than \$500 or have his or her driver's license suspended for up to one year, or both
2 for a second or subsequent violation.

3 318-F:5 Operation of a Motor Vehicle.

4 I. Nothing in this chapter shall be construed to permit driving or operating under the
5 influence of drugs or liquor pursuant to RSA 265-A, nor shall this section prevent the state from
6 enacting and imposing penalties for driving under the influence of or while impaired by marijuana.

7 II. Nothing in this chapter shall be construed to permit the transfer of marijuana to a
8 person under the age of 21, or to allow a person under the age of 21 to possess, use, transport, grow,
9 or consume marijuana.

10 3 Controlled Drug Act; Penalties. Amend the introductory paragraph in RSA 318-B:26, I to
11 read as follows:

12 I. Any person who manufactures, sells, prescribes, administers, or transports or possesses
13 with intent to sell, dispense, or compound any controlled drug, controlled drug analog or any
14 preparation containing a controlled drug, except as authorized in this chapter **or as otherwise**
15 **authorized by law**; or manufactures, sells, or transports or possesses with intent to sell, dispense,
16 compound, package or repackage (1) any substance which he **or she** represents to be a controlled
17 drug, or controlled drug analog, or (2) any preparation containing a substance which he **or she**
18 represents to be a controlled drug, or controlled drug analog, shall be sentenced as follows, except as
19 otherwise provided in this section:

20 4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, I(d)(1) to read as follows:

21 (1) Marijuana in a quantity of less than one ounce including any adulterants or
22 dilutants, or hashish in a quantity of less than 5 grams including any adulterants or dilutants,
23 **except as authorized in RSA 318-F**;

24 5 Controlled Drug Act; Penalties. Amend the introductory paragraph in RSA 318-B:26, II to
25 read as follows:

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

31 6 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(d) to read as follows:

32 (d) In the case of **more than one ounce of** marijuana [~~including any adulterants or~~
33 ~~dilutants, or 5 grams or less of hashish~~] the person shall be guilty of a misdemeanor.

34 7 New Subparagraphs; Controlled Drug Act; Penalties. Amend RSA 318-B:26, II by inserting
35 after subparagraph (e) the following new subparagraphs:

36 (f) In the case of a person over the age of 18 and under the age of 21 who possesses not
37 more than one ounce of marijuana, or 5 grams of hashish, the person shall be guilty of a violation
38 and shall be fined \$100.

(g) In the case of a person under the age of 18 who possesses not more than one ounce of marijuana, or 5 grams of hashish, the person shall be guilty of a violation and shall be subject to a petition under RSA 169-B:6. In addition to any requirements imposed as a result of a petition under RSA 169-B:10, the court shall refer the offender for a substance abuse assessment of the offender to be completed within 60 days. Said assessment shall be completed by a licensed drug and alcohol counselor. Results of the assessment shall be submitted to the court and, if indicated, the court shall order that the offender obtain appropriate treatment. The offender shall furnish the court with evidence of completion of the substance abuse assessment. An offender who fails to complete a substance abuse assessment as ordered shall be subject to a \$200 fine. In all cases under this subparagraph, the offender's parent or legal guardian shall be notified of the offense and all proceedings.

8 Committee Established.

I. There is established a committee to study legalizing, regulating, and restricting access to marijuana.

II. The members of the committee shall be as follows:

(a) Five members of the house of representatives, all of whom voted in support of final passage of this act, 3 of whom shall be appointed by the speaker of the house of representatives and 2 of whom shall be appointed by the minority leader of the house of representatives.

(b) Four members of the senate, all of whom voted in support of final passage of this act, 2 of whom shall be appointed by the senate president and 2 of whom shall be appointed by the minority leader of the senate.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV. The committee shall study the approach other states have taken to regulating marijuana for adult use, including:

(a) The rates and methods of taxation, and the amounts of tax generated.

(b) What types of licenses are issued and how licensees are selected.

(c) Whether cannabis cafes are allowed and how they are regulated.

(d) Limitations on marijuana-infused products, including on packaging and the types of edible products.

(e) Restrictions on advertising.

(f) Labeling regulations.

(g) Public education campaigns to deter youth consumption and driving under the influence.

V. The committee may solicit the advice or testimony of any organization or individual with information and expertise relevant to its study, including:

(a) Regulators from states where marijuana is legal and regulated for use by adults.

(b) Public health experts.

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- (c) Individuals with expertise in marijuana policy.
- (d) Substance abuse researchers.
- (e) Representatives of the agricultural community.
- (f) Representatives of the tourism industry.
- (g) Marijuana consumers.

VI. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Five members of the committee shall constitute a quorum.

VII. The committee shall report its findings, including recommendations for how New Hampshire should regulate marijuana to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2017. The recommendations shall include:

- (a) How and at what rate to tax marijuana.
- (b) What categories of marijuana establishments should be licensed.
- (c) How many marijuana establishments should be allowed, and how they should be selected if the committee recommends a numerical limit.
- (d) Restrictions on marijuana-infused products or their labeling and packaging.
- (e) Recommendations for public education campaigns.
- (f) Recommended allocations for some or all of the marijuana tax revenue.
- (g) The age limit or limits to possess and purchase marijuana.
- (h) Any other recommendations about how to regulate and tax marijuana in New Hampshire.

9 Effective Date.

I. Sections 2-7 of this act shall take effect January 1, 2020.

II. The remainder of this act shall take effect upon its passage.

**SB 233-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the legalization and regulation of marijuana and establishing a committee to study the legalization of marijuana.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	Indeterminable	Indeterminable
Expenditures	\$0	\$0	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input checked="" type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	Indeterminable	Indeterminable

METHODOLOGY:

This bill legalizes the possession of up to one ounce of marijuana and up to five grams of hashish, possessing or growing up to six marijuana plants, and transferring up to one ounce of marijuana and up to six immature marijuana plants by a person twenty-one years old or older without remuneration.

This bill eliminates existing and adds new 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 or not 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 2018	FY 2019
Violation Level Offense	\$48	\$48
Class B Misdemeanor	\$49	\$50
Class A Misdemeanor	\$71	\$72
Routine Criminal Felony	\$451	\$456

Case		
Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2018 and FY 2019 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$756/Case	\$756/Case
Contract Attorney – Misdemeanor	\$275/Case	\$275/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
Assigned Counsel - Supreme Court Appeals	\$2,000	\$2,000
<p>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. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).</p> <p><i>* The Council's budget request for the FY 2018-19 biennium includes an increase to \$300 per case for contract attorney misdemeanor cases.</i></p>		
Department of Corrections		
FY 2016 Average Cost of Incarcerating an Individual	\$35,832	\$35,832
FY 2016 Average Cost of Supervising an Individual on Parole/Probation	\$573	\$573
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

The Department of Safety states this bill will have an indeterminable impact on its operations. The Department assumes there will be an increase in the number of driving under the influence (DUI) marijuana related cases which could include DUI arrests and DUI crash investigations. There could also be fewer arrests made for marijuana possession which would represent an indeterminable cost savings. However, marijuana related arrests are often accompanied with additional unrelated charges so this savings may be minimal. This bill may eliminate a requirement to analyze approximately 1,500 marijuana cases, but it would not result in a direct reduction in overall costs for the Forensic Laboratory as there is currently an eight month or longer backlog of cases to be analyzed. The Department expects there will be increased fine revenue from potential violations, but the number of potential violations cannot be determined at this time.

The Department of Justice states existing resources used to prosecute large-scale drug trafficking crimes involving marijuana would be used to prosecute other controlled substances. Therefore, in regards to prosecution costs, the net impact would be \$0.

The New Hampshire Municipal Association cannot estimate whether this bill would increase or decrease local law enforcement expenditures.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Safety, Department of Justice, New Hampshire Association of Counties, New Hampshire Municipal Association, and Department of Corrections