

Floor Amendment to HB 640-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 Statement of Purpose. The general court finds that:

4 I. Reducing the penalty for possessing 1/2 of an ounce or less of marijuana to a violation and  
5 allowing offenders to pay fines by mail will result in less time and resources spent on such cases,  
6 allowing police and courts to spend more time and resources dealing with serious crimes.

7 II. A criminal penalty accompanying a conviction for possession of 1/2 of an ounce or less of  
8 marijuana can lead to a lifetime of harsh consequences. These may include denial of student  
9 financial aid, housing, employment, and professional licenses. Reducing this penalty to a violation  
10 will significantly reduce the number of New Hampshire residents who receive criminal records for  
11 possessing 1/2 of an ounce or less of marijuana.

12 III. Marijuana policy reforms that reduce criminal penalties for the possession of 1/2 of an  
13 ounce or less of marijuana have the potential to address social and racial inequities in the New  
14 Hampshire criminal justice system.

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

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

23 2 New Sections; Controlled Drug Act; Personal Possession of Marijuana. Amend RSA 318-B by  
24 inserting after section 2-b the following new sections:

25 318-B:2-c Personal Possession of Marijuana.

26 I. In this section:

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

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1 such plant which is incapable of germination.

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

8 II. Except as provided in RSA 126-X, any person who knowingly possesses 1/2 of an ounce  
9 or less of marijuana, including adulterants or dilutants, shall be guilty of a violation, and subject to  
10 the penalties provided in paragraph V.

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

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

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

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

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

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

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

5 (d) Any person in possession of an identification card, license, or other form of  
6 identification issued by the state or any state, country, city, or town, or any college or university,  
7 who fails to produce the same upon request of a police officer or who refuses to truthfully provide  
8 his or her name, address, and date of birth to a police officer who has informed the person that he or  
9 she has been found to be in possession of what appears to the officer to be 1/2 of an ounce or less of  
10 marijuana, a personal-use amount of a regulated marijuana-infused product, or 5 grams or less of  
11 hashish, may be arrested for a violation of paragraph II, III, or IV.

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

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

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

23 318-B:2-d Plea by Mail.

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

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

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

36 IV. Whenever a defendant willfully fails to pay a fine in connection with a conviction for a  
37 violation of RSA 318-B:2-c, II, III, or IV or payment of such fine cannot be collected, the defendant

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1 shall be defaulted and the court may impose an additional fine of \$100.

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

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

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

14 3 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II to read as follows:

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

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

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

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

35 ~~(d)~~ In the case of *more than 1/2 ounce of* marijuana[;] *or more than 5 grams of*  
36 *hashish*, including any adulterants or dilutants, the person shall be guilty of a misdemeanor. *In*  
37 *the case of marijuana-infused products possessed by persons under the age of 21 or*

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

5 [(e)] (d) In the case of *1/2 ounce or less of marijuana* or 5 grams or less of hashish,  
6 *including any adulterants or dilutants*, the person shall be guilty of a [class A misdemeanor]  
7 *violation pursuant to RSA 318-B:2-c. In the case of a person 21 years of age or older who*  
8 *possesses a personal-use amount of a regulated marijuana-infused product as defined in*  
9 *RSA 318-B:2-c, I(b), the person shall be guilty of a violation pursuant to RSA 318-B:2-c.*

10 4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, III(a) to read as follows:

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

13 5 Controlled Drug Act; Penalties. Amend RSA 318-B:26, XIII to read as follows:

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

18 6 Controlled Drug Act; Prior Offenses. Amend RSA 318-B:27 to read as follows:

19 318-B:27 Prior Offenses. In the case of any person charged with a violation of any provision of  
20 this chapter or RSA 318-D, who has previously been convicted of a *misdemeanor or felony level*  
21 violation of the laws of the United States or any state, territory or the District of Columbia relating  
22 to controlled drugs as defined in this chapter, such previous conviction shall be deemed a prior  
23 offense. *A prior conviction for a violation level offense shall not be deemed a prior offense,*  
24 *except as provided in RSA 318-B:2-c, V(a).*

25 7 Other Alcohol or Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as  
26 follows:

27 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly  
28 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug  
29 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her  
30 license shall be revoked or his or her right to drive denied for a period of 60 days and at the  
31 discretion of the court for a period not to exceed 2 years. *This section shall not apply to the*  
32 *possession of marijuana or hashish as provided in RSA 318-B:2-c, or a personal-use*  
33 *amount of a regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b).*

34 8 Delinquent Children; Definitions. Amend RSA 169-B:2, IV to read as follows:

35 IV. "Delinquent" means a person who has committed an offense before reaching the age of  
36 18 years which would be a felony or misdemeanor under the criminal code of this state if committed  
37 by an adult, *or which is a violation of RSA 318-B:2-c, II or III*, and is expressly found to be in

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1    need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.

2            9    New Paragraph; Delinquent Children; Mental Health and Substance Abuse Evaluation.  
3    Amend RSA 169-B:21 by inserting after paragraph II the following new paragraph:

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

14           10   Effective Date. This act shall take effect 60 days after its passage.

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2017-1692s

AMENDED ANALYSIS

This bill reduces the penalty for possession of 1/2 ounce or less of marijuana, or 5 grams or less of hashish to a violation.