

SB 299-FN - AS AMENDED BY THE HOUSE

02/16/2022 0666s  
4May2022... 1907h

2022 SESSION

22-2976  
04/11

SENATE BILL      ***299-FN***

AN ACT                      relative to the penalty for escape and relative to home cultivation of cannabis plants and the possession of certain cannabis-infused products.

SPONSORS:              Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Sen. Prentiss, Dist 5

COMMITTEE:            Judiciary

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AMENDED ANALYSIS

This bill amends the penalty for escape. The bill also permits adults to possess up to 3/4 of an ounce of cannabis, 5 grams of hashish, and certain cannabis-infused products; permits adults to cultivate up to 6 cannabis plants at home in a secure location that is not visible from other properties, and to possess and process the cannabis produced from their plants at the same location; permits adults to give cannabis to other adults, provided it is not more than 3/4 of an ounce of cannabis, 5 grams of hashish, or up to 300 mg of cannabis-infused products, or 3 immature plants; provides that smoking or vaporizing cannabis in public by an adult would be punishable by a \$100 fine; provides that violations of the restrictions on cultivation would be a violation punishable by fine of up to \$750; penalizes dangerous, volatile extraction; and permits adults to possess, make, and sell cannabis accessories to other adults.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    relative to the penalty for escape and relative to home cultivation of cannabis plants and the possession of certain cannabis-infused products.

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

1            1   Obstructing Governmental Operations; Escape. Amend RSA 642:6, III to read as follows:

2            III. The offense is a class A felony if the actor employs force against any person or threatens  
3 any person with a deadly weapon to effect the escape, except that if the deadly weapon is a firearm,  
4 the actor shall be sentenced in accordance with RSA 651:2, II-g. The offense is a class B felony,  
5 **regardless of whether force is used**, if the actor was on parole, subject to a bail order, was a  
6 prisoner at an adult or juvenile correction facility at the time, or had been released from any  
7 correctional institution pursuant to administrative home confinement or any treatment program or  
8 other place as directed by the correctional authority or sentencing court, or had a prior conviction of  
9 the crime of escape. **In all other cases**, if no physical force was used by the actor and no persons  
10 other than the actor sustained bodily injury as a result of the escape, the offense is a class A  
11 misdemeanor.

12           2   Statement of Purpose. The general court finds that:

13           I. Since 2012, Canada, the District of Columbia and 9 states, including Maine, Vermont,  
14 and the commonwealth of Massachusetts, have legalized possession and limited cultivation of  
15 cannabis by adults 21 years of age and older.

16           II. Statewide polls have consistently found that most New Hampshire voters support  
17 making cannabis legal for adults 21 years of age and older.

18           III. Cannabis is less harmful than alcohol to the consumer and to society. It is less toxic,  
19 less harmful to the body, less addictive, and less likely to contribute to violent or reckless behavior.  
20 Adults should not be punished choosing to use cannabis instead of alcohol, if that is what they  
21 prefer.

22           IV. Home brewing of alcoholic beverages is legal in New Hampshire and every other state in  
23 the nation.

24           V. Allowing adults to cultivate their own limited supply of cannabis will provide them with  
25 an alternative to buying cannabis from illicit drug dealers.

26           3   Other Alcohol and 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

analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her license shall be revoked or his or her right to drive denied for a period of 60 days and at the discretion of the court for a period not to exceed 2 years. This section shall not apply to the possession of cannabis or hashish as provided in RSA 318-B:2-c~~[, or a personal use amount of a regulated marijuana-infused product as defined in RSA 318-B:2-e, I(b)].~~

4 Controlled Drug Act; Personal Possession of Cannabis. Amend RSA 318-B:2-c to read as follows:

318-B:2-c Personal Possession of ~~[Marijuana]~~ **Cannabis**.

I. In this section:

(a) ~~["Marijuana"]~~ **"Cannabis"** includes the leaves, stems, flowers, and seeds of all species of the plant genus cannabis, but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture, or preparation from such resin including hashish, and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination. Marijuana shall not include hemp grown, processed, marketed, or sold under RSA 439-A.

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

(c) **"Possession limit" means:**

(1) **Three-quarters of an ounce of cannabis, excluding hashish, cannabis-infused products, and growing cannabis plants;**

(2) **Five grams of hashish;**

(3) **Cannabis-infused products containing no more than 300 milligrams of tetrahydrocannabinol (THC);**

(4) **Six cannabis plants, with 3 or fewer being mature, flowering plants; and**

(5) **Any additional cannabis, hashish, or cannabis-infused products produced from the person's cannabis plants, provided that any amount of cannabis in excess of 3/4 of an ounce of cannabis, 5 grams of hashish, and cannabis-infused products containing no more than 300 milligrams of THC shall be possessed in the same location where the plants were cultivated.**

*I-a. Except as provided in paragraphs I-b and I-c, if undertaken by a person 21 years of age or older, the following acts shall not be illegal under New Hampshire law, shall not be a criminal or civil offense under New Hampshire law or the law of any political subdivision of New Hampshire, and shall not be a basis for seizure or forfeiture of assets under New Hampshire law:*

*(a) Possessing, consuming, growing, processing, or transporting an amount of cannabis that does not exceed the possession limit; or*

*(b) Transferring  $\frac{3}{4}$  of an ounce of cannabis, 5 grams of hashish, cannabis-infused products containing no more than 300 milligrams of THC, or 3 immature, non-flowering cannabis plants to a person who is 21 years of age or older without remuneration. For purposes of this subparagraph, a transfer is for remuneration if cannabis is given away contemporaneously with another transaction between the same parties, if a gift of cannabis is offered or advertised in conjunction with an offer for sale of goods or services, or if the gift of cannabis is contingent upon a separate transaction for goods or services; and*

*(c) Manufacturing, possessing, or purchasing cannabis accessories, or distributing or selling cannabis accessories to a person who is 21 years of age or older.*

*I-b. No person who is 21 years of age or older shall cultivate cannabis plants except as provided in this section:*

*(a) Cannabis plants shall not be cultivated in a location where the plants are subject to public view, including to view from another private property, without the use of binoculars, aircraft, or other optical aids.*

*(b) A person who cultivates cannabis shall take reasonable precautions to ensure the plants are secure from unauthorized access. Cultivating cannabis in an enclosed, locked space to which unauthorized persons do not have access, or other similar security precautions, shall be prima facie evidence of reasonable precautions.*

*(c) Cannabis cultivation shall only occur at the cultivator's primary residence.*

*(d) A person who violates this section shall be guilty of a violation and may be fined not more than \$750.*

*I-c. No person shall consume cannabis in a public place. A person 21 years of age or older who violates this paragraph shall be guilty of a violation and may be fined not more than \$100.*

II. Except as provided in RSA 126-X, any person ***under 21 years of age*** who knowingly possesses  $\frac{3}{4}$  of an ounce or less of [~~marijuana~~] ***cannabis***, including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided in paragraph [V] IV.

III. Except as provided in RSA 126-X, any person ***under 21 years of age*** who knowingly possesses 5 grams or less of hashish, including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided in paragraph [V] ***IV***.

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

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

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

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

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

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

(d) Any person in possession of an identification card, license, or other form of identification issued by the state or any state, country, city, or town, or any college or university, who fails to produce the same upon request of a police officer or who refuses to truthfully provide his or her name, address, and date of birth to a police officer who has informed the person that he or she has been found to be in possession of what appears to the officer to be 3/4 of an ounce or less of

~~[marijuana, a personal-use amount of a regulated marijuana-infused product,]~~ **cannabis** or 5 grams or less of hashish, may be arrested for a violation of paragraph ~~[II, III, or IV]~~ **II or III**.

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

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

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

**VIII. Nothing in this section shall:**

(a) *Be construed to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of cannabis in the workplace or to affect the ability of employers to have policies restricting the use of cannabis by employees.*

(b) *Be construed to permit driving or operating under the influence of drugs or liquor pursuant to RSA 265-A, nor prevent the state from enacting and imposing penalties for driving under the influence of or while impaired by cannabis.*

(c) *Be construed to permit the transfer of cannabis, with or without remuneration, to a person under 21 years of age, or to allow a person under 21 years of age to purchase, possess, use, transport, grow, or consume cannabis.*

(d) *Prohibit a state or county correctional facility from prohibiting the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of cannabis on or in the correctional facility's property.*

(e) *Prohibit a person or other entity that legally owns, leases, or controls any property from prohibiting or otherwise regulating the sale, use, or growing of cannabis on or in the property.*

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

(c) In the case of more than 3/4 ounce of ~~[marijuana]~~ **cannabis, cannabis-infused products containing more than 300 milligrams of THC**, or more than 5 grams of hashish, including any adulterants or dilutants, the person shall be guilty of a misdemeanor. In the case of ~~[marijuana-infused]~~ **cannabis-infused** products possessed by persons under the age of 21 ~~[or marijuana-infused products as defined in RSA 318-B:2-c, other than a personal-use amount of a~~

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~~regulated marijuana-infused product as defined in RSA 318-B:2-c, I(b), that are possessed by a person 21 years of age or older], the person shall be guilty of a misdemeanor.~~

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

6 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after paragraph VIII the following new paragraph:

VIII-a.(a) No person, other than an alternative treatment center approved pursuant to RSA 126-X, shall perform solvent-based extractions on cannabis using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol.

(b) No person shall extract compounds from cannabis using ethanol in the presence or vicinity of an open flame.

(c) Any person who violates this paragraph shall be guilty of a class A misdemeanor.

7 Model Drug Dealer Liability Act; Definitions. Amend RSA 318-C:4, I to read as follows:

I. "Illegal drug" means any drug which is a schedule I-IV drug under RSA 318-B, ***the possession, use, manufacture, sale, or transportation of which is not otherwise authorized by law.***

8 Effective Date. This act shall take effect January 1, 2023.

**SB 299-FN- FISCAL NOTE**  
AS AMENDED BY THE HOUSE (AMENDMENT #2022-1907h)

AN ACT relative to the penalty for escape and relative to home cultivation of cannabis plants and the possession of certain cannabis-infused products.

**FISCAL IMPACT:**    ☐ State                    ☒ County                    ☐ Local                    ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

**METHODOLOGY:**

This bill amends the penalty for escape. The bill also permits adults to possess up to 3/4 of an ounce of cannabis, 5 grams of hashish, and certain cannabis-infused products; permits adults to cultivate up to 6 cannabis plants at home in a secure location that is not visible from other properties, and to possess and process the cannabis produced from their plants at the same location; permits adults to give cannabis to other adults, provided it is not more than 3/4 of an ounce of cannabis, 5 grams of hashish, or up to 300 mg of cannabis-infused products, or 3 immature plants; provides that smoking or vaporizing cannabis in public by an adult would be punishable by a \$100 fine; provides that violations of the restrictions on cultivation would be a violation punishable by fine of up to \$750; penalizes dangerous, volatile extraction; and permits adults to possess, make, and sell cannabis accessories to other adults.

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 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 Council	FY 2022	FY 2023
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Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/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
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. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
Department of Corrections	FY 2022	FY 2023
FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

**AGENCIES CONTACTED:**

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