

HB 629-FN - AS INTRODUCED

2021 SESSION

21-0021

04/10

HOUSE BILL

629-FN

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

SPONSORS: Rep. McGuire, Merr. 29; Rep. True, Rock. 4; Rep. Verville, Rock. 2; Rep. T. Lekas, Hills. 37; Rep. Sylvia, Belk. 6; Rep. McWilliams, Merr. 27

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill 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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the 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 Statement of Purpose. The general court finds that:

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

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

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

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

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

15 2 Other Alcohol and Drug Offenses; Possession of Drugs. Amend RSA 265-A:43 to read as
16 follows:

17 265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly
18 having in his or her possession or in any part of the vehicle a controlled drug or controlled drug
19 analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her
20 license shall be revoked or his or her right to drive denied for a period of 60 days and at the
21 discretion of the court for a period not to exceed 2 years. This section shall not apply to the
22 possession of cannabis or hashish as provided in RSA 318-B:2-c~~[-or a personal-use amount of a~~
23 ~~regulated marijuana-infused product as defined in RSA 318-B:2-e, I(b)].~~

24 3 Controlled Drug Act; Personal Possession of Cannabis. Amend RSA 318-B:2-c to read as
25 follows:

26 318-B:2-c Personal Possession of ~~[Marijuana]~~ **Cannabis**.

27 I. In this section:

28 (a) ~~["Marijuana"]~~ **"Cannabis"** includes the leaves, stems, flowers, and seeds of all species
29 of the plant genus cannabis, but shall not include the resin extracted from any part of such plant and
30 every compound, manufacture, salt, derivative, mixture, or preparation from such resin including

1 hashish, and further, shall not include the mature stalks of such plant, fiber produced from such
2 stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt,
3 derivative, mixture, or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of
4 such plant which is incapable of germination. Marijuana shall not include hemp grown, processed,
5 marketed, or sold under RSA 439-A.

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

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

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

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

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

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

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

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

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

32 (b) *Transferring 3/4 of an ounce of cannabis, 5 grams of hashish, cannabis-*
33 *infused products containing no more than 300 milligrams of THC, or 3 immature, non-*
34 *flowering cannabis plants to a person who is 21 years of age or older without*
35 *remuneration. For purposes of this subparagraph, a transfer is for remuneration if*
36 *cannabis is given away contemporaneously with another transaction between the same*
37 *parties, if a gift of cannabis is offered or advertised in conjunction with an offer for sale of*

1 *goods or services, or if the gift of cannabis is contingent upon a separate transaction for*
2 *goods or services; and*

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

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

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

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

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

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

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

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

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

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

30 V. (a) Except as provided in this paragraph, any person 18 years of age or older who is
31 convicted of violating paragraph II or III [~~, or any person 21 years of age or older who is convicted of~~
32 ~~violating paragraph IV]~~ shall be subject to a fine of \$100 for a first or second offense under this
33 paragraph, or a fine of up to \$300 for any subsequent offense within any 3-year period; however, any
34 person convicted based upon a complaint which alleged that the person had 3 or more prior
35 convictions for violations of paragraph [II, III ~~or IV~~] *II or III*, or under reasonably equivalent
36 offenses in an out-of-state jurisdiction since the effective date of this paragraph, within a 3-year
37 period preceding the fourth offense shall be guilty of a class B misdemeanor. The offender shall

1 forfeit the [~~marijuana, regulated marijuana-infused products,~~] **cannabis** or hashish to the state. A
2 court shall waive the fine for a single conviction within a 3-year period upon proof that person has
3 completed a substance abuse assessment by a licensed drug and alcohol counselor within 60 days of
4 the conviction. A person who intends to seek an assessment in lieu of the fine shall notify the court,
5 which shall schedule the matter for review after 180 days. Should proof of completion of an
6 assessment be filed by or before that time, the court shall vacate the fine without a hearing unless
7 requested by a party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 4 Controlled Drug Act; Penalties. Amend RSA 318-B:26, II(c) and (d) to read as follows:

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

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

30 5 New Paragraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26 by inserting after
31 paragraph VIII the following new paragraph:

32 VIII-a.(a) No person, other than an alternative treatment center approved pursuant to RSA
33 126-X, shall perform solvent-based extractions on cannabis using solvents other than water,
34 glycerin, propylene glycol, vegetable oil, or food grade ethanol.

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

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

HB 629-FN - AS INTRODUCED

- Page 6 -

1 6 Model Drug Dealer Liability Act; Definitions. Amend RSA 318-C:4, I to read as follows:

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

5 7 Effective Date. This act shall take effect January 1, 2022.

**HB 629-FN- FISCAL NOTE
AS INTRODUCED**

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

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Alcohol abuse prevention and treatment fund			

COUNTY:

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

LOCAL:

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

METHODOLOGY:

This bill 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.

The Judicial Branch offers the following information concerning the fiscal impact of this bill:

- The bill, which makes it legal to possess personal-use quantities of cannabis, could reasonably be expected to decrease the number of simple possession cases in the Circuit Courts, thus lowering revenue from fines. However, this bill also creates a number of new violation-level offenses, which could be expected to increase the volume of cases and revenue from fines.
- The Branch assumes the bill is likely to increase the ubiquity and availability of cannabis, while at the same time making it illegal to consume cannabis in public. This is likely increase the number of violation-level offenses and the associated fine revenue.
- Because the bill restricts where and how cannabis can be grown, people who live in rural areas and own their own homes will have conditions favorable for growing their own cannabis plants. These restrictions would likely constrain those living in urban settings from growing cannabis, as they are less likely to have the physical space conditions conducive for growing cannabis. Accordingly, the bill is unlikely to affect the supply and demand for cannabis in urban communities, and is unlikely to increase or decrease the number of marijuana-related charges presently brought in the Circuit and Superior Courts in those areas.
- Since the bill preserves the illegality of possessing cannabis in larger quantities and the illegality of selling or exchanging marijuana, and because it would likely have little effect on the supply and demand in more densely populated areas, it will likely not effect the number of misdemeanor and felony-level criminal cases brought in the Circuit and Superior Court or on the fine revenue from those proceedings.
- Overall it is likely the bill would lead to an increase in the number of violation-level offenses in the Circuit Court and increase fine revenue to the Alcohol Abuse Prevention and Treatment Fund. The increase in workload is likely be able to be absorbed by the Judicial Branch within existing resources.

The Judicial Council indicates the indigent defense system handles very few stand-alone marijuana possession cases, so a decrease in those charges will not impact expenditures. Individuals are not entitled to court-appointed counsel for a violation level offense so representation would not be provided through the indigent defense system for violating this statute.

The Department of Justice would not be involved in the prosecution of these offenses, which would be handled by municipal prosecutors and the county attorneys. Appeals from convictions from such offenses would be handled by the Criminal Justice Bureau and could be done within the current budget. The Attorney General's Drug Task Force investigates street-level crimes that sometimes involve the sale and possession of controlled drugs, including marijuana. If this

bill were to pass, the task force's efforts would be redirected away from marijuana cases to other controlled drugs. The Department assumes the bill would have little impact on its prosecution or investigation tasks. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would absorb the cost within its existing budget.

The Department of Safety, Division of State Police, states the fiscal impact of the bill is indeterminable at this time. The Division indicates there will be costs associated with the laboratory analysis necessary for cannabis infused products seized as evidence. This cost is unknown. In addition, there may be savings as less cannabis would be submitted for analysis due to fewer arrests for cannabis possession. However, the amount of such savings cannot be predicted. Fewer possession of cannabis cases may result in a reduction in local law enforcement expenditures, but any such reduction is speculative and therefore indeterminable.

The Department of Health and Human Services, Bureau of Drug and Alcohol Services notes there is considerable uncertainty about the impact that legalizing personal use of marijuana in New Hampshire would have on public budgets including unknowns around potential increases in consumption, treatment utilization, and associated costs. The Department indicates the science is currently divided on the causal effects of marijuana on psychoses, schizophrenia, and drugged driving. The Department is unable to determine if these areas would be impacted or what fiscal impact may result. Any additional fine revenue that would be deposited into the alcohol fund to support treatment and prevention services is also indeterminable. The Division of Public Health Services reviewed this bill and determined that there is no fiscal impact to that program area.

The Department of Corrections indicates it cannot predict the number of people that would be affected by this bill, which makes the fiscal impact indeterminable.

The New Hampshire Municipal Association states legalization of cannabis and hashish is likely to affect municipal expenditures, primarily for law enforcement. There may be a reduction in expenditures related to drug enforcement because sale, possession, and use of these products by adults will no longer be illegal. At the same time, if legalization results in an increase in usage, there may be an increase in expenditures related to impaired driving enforcement, overdose response, and preventing sale to minors. These effects are speculative and not capable of estimate. Therefore, the Association cannot estimate the effect on municipal expenditures. There should be no effect on municipal revenues.

The New Hampshire Association of Counties states it is not able to determine the number of individuals that this bill would impact, and therefore is unable to determine the fiscal impact on the county expenditures and revenue.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Departments Justice, Safety, Health and Human Services and Corrections, New Hampshire Municipal Association and New Hampshire Association of Counties