

Support HB 473 - Stop Saddling Thousands of People with Felony Records Each Year for Drug Possession

Bill Summary: HB 1360 as amended would reduce first-time possession or use of schedule I, II, III, or IV controlled drugs from a class B felony to an unclassified misdemeanor and subsequent violations from a class A to a class B felony.

Under current law, first-time possession or use of schedule I, II, III, or IV controlled drugs (excluding marijuana) in New Hampshire is a class B felony, punishable by up to seven years in prison and a fine of up to \$25,000.ⁱ Any subsequent possession violation is a class A felony, punishable at least seven years in prison and a fine of up to \$50,000.ⁱⁱ

Public safety resources should be focused on enhancing public safety. The vast majority of New Hampshire drug arrests are for possession, not sale, and that trend is going in the wrong direction. There were 3,592 total drug arrests in New Hampshire in 2021, and over 87 percent of those arrests (3,150) were for possession.ⁱⁱⁱ In the past 5 years drug possession arrests (24,031 total arrests) comprised over 84 percent of all drug arrests (28,552 total arrests).^{iv} In the past 10 years, drug possession arrests (48,204 total arrests) comprised over 80 percent of all drug arrests (59,742 total arrests).^v

Saddling people with felony records for the possession of drugs does not make our communities safer. In addition to the potential of years of incarceration, the collateral harms of a felony conviction are tremendous – they inhibit pathways to rejoining communities, including making it more difficult for individuals to secure safe housing, meaningful education, and gainful employment. These obstacles increase the likelihood that individuals will reenter the criminal justice system.

New Hampshire laws are enforced with a staggering racial bias.^{vi} Despite making up just 1.8 percent of New Hampshire's population,^{vii} Black people comprised 5.8 percent of all arrests and 6.5 percent of all drug arrests in 2020.^{viii} And, this disparity has remained consistent. Black people comprised 5.7 percent of all drug arrests in the past 5 years^{ix} and 5.2 percent over the past 10 years.^x Reclassifying drug possession as a misdemeanor offense provides an opportunity to begin to address the disproportionate harms that New Hampshire's criminal justice system has had on Black and Brown people.

New Hampshire's drug laws are a waste of taxpayer dollars. For decades, this country sought to solve drug use and crime through lengthy incarceration. Federally, and at the state level, drug sentences and fines steadily increased under the belief that eventually we would find the number of years in prison that it took to deter crime. The research is clear, harsh sentences, and incarceration in general, are not effective ways to deter crime.^{xi} The ineffectiveness of incarceration and harsh sentences as a tool to combat drug use is also clear.^{xii} New Hampshire lawmakers must rein in this counterproductive and harmful approach to addressing drug use.

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ⁱ RSA 318-B:26(II)(a).

ⁱⁱ *Id.*

ⁱⁱⁱ Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, 2021 data, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^{iv} Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, past 5 years, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^v Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, past 10 years, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^{vi} Note: Racial disparity numbers on this sheet are based on 2020 data provided to the FBI because only a very limited number of New Hampshire law enforcement agencies provided race disparity data in 2021. This is a very serious problem that the NH Legislature must address.

^{vii} U.S. Census Bureau, QuickFacts, New Hampshire, *available at* <https://www.census.gov/quickfacts/NH>.

^{viii} Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, 2021 data, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^{ix} Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, past 5 years, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^x Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, past 10 years, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

^{xi} National Institute of Justice, *Five Things About Deterrence*, U.S. Dept. of Justice, June 5, 2016, *available at* <https://nij.ojp.gov/topics/articles/five-things-about-deterrence#addenda> (“Some policymakers and practitioners believe that increasing the severity of the prison experience enhances the “chastening” effect, thereby making individuals convicted of an offense less likely to commit crimes in the future. In fact, scientists have found no evidence for the chastening effect. Prisons may exacerbate recidivism. Research has found evidence that prison can exacerbate, not reduce, recidivism. Prisons themselves may be schools for learning to commit crimes.”).

^{xii} Issue Brief, *More Imprisonment Does Not Reduce State Drug Problems*, Pew Charitable Trusts, Mar. 8, 2018, *available at* <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems> (“The Pew Charitable Trusts examined publicly available 2014 data from federal and state law enforcement, corrections, and health agencies. The analysis found no statistically significant relationship between state drug imprisonment rates and three indicators of state drug problems: self-reported drug use, drug overdose deaths, and drug arrests. ¶ The findings—which Pew sent to the President’s Commission on Combating Drug Addiction and the Opioid Crisis in a letter dated June 19, 2017—reinforce a large body of prior research that cast doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations. The evidence strongly suggests that policymakers should pursue alternative strategies that research shows work better and cost less.”).