

## Support SB 570 - Stop Saddling Thousands of People with Felony Records Each Year for Drug Possession

**Bill Summary:** SB 570 would reduce first-time possession or use of schedule I, II, III, IV, or V controlled drugs from a class B felony to a class A misdemeanor and subsequent violations from a class A to a class B felony. *This legislation only amends and impacts drug possession laws, it does nothing to amend or hinder the ability of law enforcement and county attorneys to charge individuals who manufacture, sell, or possess with intent to sell schedule I, II, III, IV, V controlled drugs.*

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<sup>i</sup> in prison and a fine of up to \$25,000.<sup>ii</sup> Any subsequent possession violation is a class A felony, punishable by up to 15 years<sup>iii</sup> in prison and a fine of up to \$50,000.<sup>iv</sup> Under current law, first-time possession or use of schedule V drug in New Hampshire is punishable by up to 3 years in prison and a fine of up to \$15,000. Any subsequent possession violation is a class B felony, punishable by up to 7 years<sup>v</sup> in prison and a fine of up to \$25,000.<sup>vi</sup>

**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 3,314 total drug arrests in New Hampshire in 2022, and over 89 percent of those arrests (2,962) were for possession.<sup>vii</sup> In the past 5 years drug possession arrests (21,426 total arrests) comprised over 86 percent of all drug arrests (24,718 total arrests).<sup>viii</sup> In the past 10 years, drug possession arrests (48,517 total arrests) comprised over 81 percent of all drug arrests (59,232 total arrests).<sup>ix</sup>

**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. For example, there are 266 mandatory consequences to a felony conviction under New Hampshire law, 155 of which are indefinite.<sup>x</sup> These obstacles increase the likelihood that individuals will reenter the criminal justice system.

**People convicted of drug possession under this revision would still face serious punishment.** For example, people convicted of *first-time* possession or use of schedule I, II, III, or IV controlled drug would still face a misdemeanor charge that could carry up to one year in jail<sup>xi</sup> and a fine of up to \$2,000<sup>xii</sup>. And, there are 80 mandatory consequences to a misdemeanor conviction under New Hampshire law, 41 of which are indefinite.<sup>xiii</sup> In addition, people convicted of a second or subsequent possession or use offense would face a Class B felony that could carry up to *seven years* in state prison and each of the 266 mandatory consequences to a felony conviction noted above.<sup>xiv</sup>

**New Hampshire laws are enforced with a staggering racial bias.** In 2022 Black people were 3.04 times more likely to be arrested when compared with white people,<sup>xv</sup> and 3.49 times more likely to be arrested for a drug offense when compared with white people.<sup>xvi</sup> Despite making up just 2 percent of New Hampshire's population,<sup>xvii</sup> Black people comprised 6 percent of all drug arrests in the past 5 years<sup>xviii</sup> and 6 percent over the past 10 years.<sup>xix</sup> 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.<sup>xx</sup> The ineffectiveness of incarceration and harsh sentences as a tool to combat drug use is also clear.<sup>xxi</sup> New Hampshire lawmakers must rein in this counterproductive and harmful approach to addressing drug use.

## Support SB 570– Defelonize the Possession of Drugs

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<sup>i</sup> RSA 651:2(II)(a).

<sup>ii</sup> RSA 318-B:26(II)(a).

<sup>iii</sup> RSA 651:2(II)(b).

<sup>iv</sup> RSA 318-B:26(II)(a).

<sup>v</sup> RSA 318-B:26(II)(b).

<sup>vi</sup> RSA 318-B:26(II)(b).

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

<sup>viii</sup> 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>.

<sup>ix</sup> 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>.

<sup>xx</sup> National Inventory of Collateral Consequences of Conviction, Collateral Consequences Inventory, available at <https://niccc.nationalreentryresourcecenter.org/consequences>.

<sup>xi</sup> RSA 651:2(II)(c).

<sup>xii</sup> RSA 651:2(IV)(a).

<sup>xiii</sup> National Inventory of Collateral Consequences of Conviction, Collateral Consequences Inventory, available at <https://niccc.nationalreentryresourcecenter.org/consequences>.

<sup>xiv</sup> RSA 651:2(II)(b).

<sup>xv</sup> In 2022 New Hampshire law enforcement arrested 33,589 white people and 2,211 arrests of Black people. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire, 2022, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest> & U.S. Census Bureau, QuickFacts, New Hampshire, available at <https://www.census.gov/quickfacts/fact/table/NH.manchestercitynewhampshire.concordcitynewhampshire/PST045222>.

<sup>xvi</sup> In 2022 New Hampshire arrested 3,051 white people and 230 Black people for drug possession. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Abuse Violations – Grand Total, 2022, available at <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest> & U.S. Census Bureau, QuickFacts, New Hampshire, available at <https://www.census.gov/quickfacts/fact/table/NH.manchestercitynewhampshire.concordcitynewhampshire/PST045222>.

<sup>xvii</sup> U.S. Census Bureau, QuickFacts, New Hampshire, available at <https://www.census.gov/quickfacts/NH>.

<sup>xviii</sup> 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>.

<sup>xix</sup> 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>.

<sup>xx</sup> 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.”).

<sup>xxi</sup> 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

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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.”).