

1 H.427

2 Introduced by Representatives Lorber of Burlington, Howard of Cambridge

3 and Pearson of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Regulated drugs; marijuana

7 Statement of purpose: This bill proposes to change the penalties for the
8 possession of small amounts of marijuana. A person 21 years of age or older
9 who possesses one ounce or less of marijuana would be assessed a civil fine of
10 up to \$150.00, while possession of larger amounts would continue to be a
11 criminal offense subject to imprisonment. Persons 18 to 20 years of age who
12 possesses one ounce or less of marijuana would be assessed a civil fine of up to
13 \$150.00 for a first offense, while second or subsequent offenses would require
14 the person to complete a drug awareness and community service program run
15 by court diversion. Failure to complete the program would result in a civil fine
16 of not more than \$600.00 and a suspension of the person's driver's license for
17 a period of up to 120 days. Persons under the age of 18 who possess one
18 ounce or less of marijuana would be required to complete a drug awareness
19 and community service program run by court diversion for a first offense. A
20 minor who fails to complete the program would be assessed a civil fine of up
21 to \$300.00 and would lose his or her driver's license for 90 days. Subsequent
22 offenses would require the person to complete a drug awareness and

1 community service program run by court diversion. Failure to complete the
2 program would result in a civil fine of not more than \$600.00 and a suspension
3 of the person's driver's license for a period of up to 120 days.

4 An act relating to penalties for possession of marijuana

5 It is hereby enacted by the General Assembly of the State of Vermont:

6 Sec. 1. SHORT TITLE

7 This act may be known as "An Act Establishing a Sensible State Marijuana
8 Policy."

9 Sec. 2. 18 V.S.A. § 4230 is amended to read:

10 § 4230. MARIJUANA

11 (a) Possession and cultivation.

12 (1) A person knowingly and unlawfully possessing marijuana in an
13 amount consisting of one or more preparations, compounds, mixtures, or
14 substances of an aggregate weight of more than one ounce containing any
15 marijuana shall be imprisoned not more than six months or fined not more than
16 \$500.00, or both. A person convicted of a second or subsequent offense under
17 this subdivision shall be imprisoned not more than two years or fined not more
18 than \$2,000.00, or both. Upon an adjudication of guilt for a first offense under
19 this subdivision, the court may defer sentencing as provided in 13 V.S.A.
20 § 7041 except that the court may in its discretion defer sentence without the

1 filing of a presentence investigation report and except that sentence may be
2 imposed at any time within two years from and after the date of entry of
3 deferment. The court may prior to sentencing, order that the defendant submit
4 to a drug assessment screening which may be considered at sentencing in the
5 same manner as a presentence report.

6 (2) A person knowingly and unlawfully possessing marijuana in an
7 amount consisting of one or more preparations, compounds, mixtures or
8 substances, of an aggregate weight of two ounces or more containing any
9 marijuana or knowingly and unlawfully cultivating more than three plants of
10 marijuana shall be imprisoned not more than three years or fined not more than
11 \$10,000.00, or both.

12 (3) A person knowingly and unlawfully possessing marijuana in an
13 amount consisting of one or more preparations, compounds, mixtures or
14 substances, of an aggregate weight of one pound or more containing any
15 marijuana or knowingly and unlawfully cultivating more than ten plants of
16 marijuana shall be imprisoned not more than five years or fined not more than
17 \$100,000.00, or both.

18 (4) A person knowingly and unlawfully possessing marijuana in an
19 amount consisting of one or more preparations, compounds, mixtures or
20 substances, of an aggregate weight of ten pounds or more or knowingly and
21 unlawfully cultivating more than 25 plants of marijuana shall be imprisoned
22 not more than 15 years or fined not more than \$500,000.00, or both.

1 (B) denying the offender's right to operate a motor vehicle; or
2 (C) disqualifying an offender from serving as a foster or adoptive
3 parent.

4 (2) A violation of this section shall not result in the creation of a
5 criminal history record of any kind, and no information about the violation
6 shall be maintained in any criminal record or database.

7 Sec. 4. 18 V.S.A. § 4230b is added to read:

8 § 4230b. MARIJUANA; POSSESSION BY MINORS; SECOND OR

9 SUBSEQUENT OFFENSE FOR PERSONS AGES 18 TO 20;

10 CIVIL VIOLATION

11 (a)(1) A person under the age of 21 years shall not knowingly and
12 unlawfully possess marijuana in an amount consisting of one or more
13 preparations, compounds, mixtures, or substances of an aggregate weight of
14 one ounce or less containing any marijuana.

15 (2) Except as otherwise provided in this section, for a first offense, a
16 person under the age of 18 who violates subdivision (1) of this subsection shall
17 be assessed a civil penalty of not more than \$300.00, and the person's
18 operator's license and privilege to operate a motor vehicle shall be suspended
19 for a period of not more than 90 days. For a second or subsequent offense, a
20 person under the age of 18 who violates subdivision (1) of this subsection shall
21 be assessed a civil penalty of not more than \$600.00, and the person's

1 operator's license and privilege to operate a motor vehicle shall be suspended
2 for a period of not more than 120 days.

3 (3) Except as otherwise provided in this section, for a second or
4 subsequent violation of subdivision (1) of this subsection or section 4230a of
5 this title, a person 18 to 20 years of age shall be assessed a civil penalty of not
6 more than \$600.00, and the person's operator's license and privilege to operate
7 a motor vehicle shall be suspended for a period of not more than 120 days.

8 (b)(1) A law enforcement officer shall issue a notice of violation, in a form
9 approved by the court administrator, to a person who violates this section. The
10 notice of violation shall require the person to provide his or her name and
11 address and shall explain the procedure under this section, including that:

12 (A) the person must contact within 15 days the diversion board in the
13 county where the offense occurred;

14 (B) failure to contact the diversion board within 15 days will result in
15 the case being referred to the judicial bureau, where the person, if found liable
16 for the violation, will be subject to the civil penalty and suspension of the
17 person's operator's license as provided in subsection (a) of this section;

18 (C) no money should be submitted to pay any penalty until after
19 adjudication; and

20 (D) the person shall notify the diversion board if the person's address
21 changes.

1 (2) When a person is issued a notice of violation under subdivision (1)
2 of this subsection, the law enforcement officer shall complete a summons and
3 complaint for the offense and send it to the diversion board in the county
4 where the offense occurred. The summons and complaint shall not be filed
5 with the judicial bureau at that time.

6 (3) Within 15 days after receiving a notice of violation issued under
7 subdivision (1) of this subsection, the person shall contact the diversion board
8 in the county where the offense occurred and register for the drug awareness
9 program. If the person fails to do so, the diversion board shall file the
10 summons and complaint with the judicial bureau for adjudication under
11 chapter 29 of Title 4. The diversion board shall provide a copy of the
12 summons and complaint to the law enforcement officer who issued the notice
13 of violation and shall provide two copies to the person charged with the
14 violation.

15 (c) If a person fails to pay a penalty imposed under this section by the time
16 ordered, the judicial bureau shall notify the commissioner of motor vehicles,
17 who shall suspend the person's operator's license and privilege to operate a
18 motor vehicle until payment is made.

19 (d)(1) Upon receipt from a law enforcement officer of a summons and
20 complaint completed under subdivision (b)(2) of this section, the diversion
21 board shall send the person a notice to report to the diversion board. The
22 notice to report shall provide that:

1 (A) The person is required to complete a drug awareness program
2 consisting of at least four hours of classroom instruction or group discussion
3 and ten hours of community service.

4 (B) If the person does not satisfactorily complete the drug awareness
5 program and community service within one year of the offense, the case will
6 be referred to the judicial bureau, where the person, if found liable for the
7 violation, will be subject to the civil penalty and suspension of the person's
8 operator's license as provided in subsection (a) of this section.

9 (C) If the person satisfactorily completes the drug awareness and
10 community service screening, no penalty will be imposed, and the person's
11 operator's license will not be suspended.

12 (2) Upon being contacted by a person who has been issued a notice of
13 violation under subdivision (b)(1) of this section, the diversion board shall
14 register the person in the drug awareness and community service program.
15 The program, which the diversion board shall establish pursuant to this section,
16 shall provide at least four hours of classroom instruction or group discussion
17 and ten hours of community service. The subject matter of the program shall
18 be specific to the use and abuse of marijuana and other regulated drugs, with
19 particular emphasis on early detection and prevention of drug abuse.

20 (3) When a person has satisfactorily completed the drug awareness and
21 community service program, the diversion board shall:

22 (A) void the summons and complaint with no penalty due; and

1 (B) send copies of the voided summons and complaint to the judicial
2 bureau and to the law enforcement officer who completed them. Before
3 sending copies of the voided summons and complaint to the judicial bureau
4 under this subdivision, the diversion board shall redact all language containing
5 the person's name, address, Social Security number, and any other information
6 which identifies the person.

7 (4) If a person does not satisfactorily complete the drug awareness and
8 community service program, the diversion board shall file the summons and
9 complaint with the judicial bureau for adjudication under chapter 29 of Title 4.
10 The diversion board shall provide a copy of the summons and complaint to the
11 law enforcement officer who issued the notice of violation and shall provide
12 two copies to the person charged with the violation.

13 (5) A person aggrieved by a decision of the diversion board may seek
14 review of that decision pursuant to Rule 75 of the Vermont Rules of Civil
15 Procedure.

16 (e) A violation of this section shall not result in the creation of a criminal
17 history record of any kind, and no information about the violation shall be
18 maintained in any criminal record or database.

19 Sec. 5. 18 V.S.A. § 4230c is added to read:

20 § 4230c. MARIJUANA; CIVIL PENALTY; GENERAL PROVISIONS

21 (a)(1) Except as provided in sections 4230a and 4230b of this title, a person
22 who possesses one ounce or less of marijuana or who possesses paraphernalia

1 for marijuana use shall not be penalized or sanctioned in any manner by the
2 state or any of its political subdivisions or denied any right or privilege under
3 state law, including:

4 (A) denying the offender student financial aid, unemployment
5 benefits, public housing, or any other form of public financial assistance;

6 (B) denying the offender's right to operate a motor vehicle; or

7 (C) disqualifying an offender from serving as a foster or adoptive
8 parent.

9 (2) A violation of this section shall not result in the creation of a
10 criminal history record of any kind, and no information about the violation
11 shall be maintained in any criminal record or database.

12 (b) Sections 4230a and 4230b of this title shall not:

13 (1) exempt any person from arrest or prosecution for being under the
14 influence of marijuana while operating a vehicle of any kind;

15 (2) be construed to repeal or modify existing laws or policies concerning
16 the operation of vehicles of any kind while under the influence of marijuana;

17 (3) be construed to prohibit a municipality from regulating, prohibiting,
18 or providing additional penalties for the use of marijuana in public places.

19 (4) be construed to limit the authority of primary and secondary schools
20 to impose noncriminal penalties for the possession of marijuana on school
21 property.

1 (5) be construed to affect the search and seizure laws afforded to duly
2 authorized law enforcement officers under the laws of this state.

3 (c) If a person suspected of violating section 4230a or 4230b of this title
4 challenges the presence of cannabinoids, the person may request that the state
5 crime laboratory test the substance at the person's expense. If the substance
6 tests negative for the presence of cannabinoids, the state shall reimburse the
7 person at state expense.

8 (d) Upon request by a law enforcement officer who reasonably suspects
9 that a person has committed or is committing a violation of section 4230a or
10 4230b of this title, the person shall give his or her name and address to the law
11 enforcement officer and shall produce a Vermont operator's license, a Vermont
12 identification card, a passport, or another suitable form of identification.

13 (e) The enforcement of sections 4230a and 4230b of this title by villages,
14 towns, and cities shall be by a local law enforcement officer or law
15 enforcement officer by contract with the village, town, or city. Law
16 enforcement officers under this subsection shall have met minimum training
17 requirements as provided in 20 V.S.A. § 2358.

18 (f) Fifty percent of the fines, forfeitures, and penalties imposed by the
19 judicial bureau for violations of sections 4230a and 4230b of this title shall be
20 retained by the state for the funding of two law enforcement officers on the
21 drug task force, except for a \$12.50 administrative charge for each violation

1 which shall be retained by the state. The remaining 50 percent shall be paid to
2 the court diversion program for funding of the drug awareness and community
3 safety program established pursuant to 18 V.S.A. § 4230b.

4 Sec. 6. 4 V.S.A. § 1102 is amended to read:

5 § 1102. JUDICIAL BUREAU; JURISDICTION

6 * * *

7 (b) The judicial bureau shall have jurisdiction of the following matters:

8 * * *

9 (22) Violations of 18 V.S.A. §§ 4230a and 4230b, relating to possession
10 of one ounce or less of marijuana.

11 * * *

12 Sec. 7. EFFECTIVE DATE

13 This act shall take effect on July 1, 2011.