

1 S.22

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 12, 2017

5 Subject: Crimes; possession of fentanyl

6 Statement of purpose of bill as introduced: This bill proposes to increase the  
7 penalties for possessing, selling, dispensing, or trafficking fentanyl.

8 ~~An act relating to increased penalties for possession, sale, and dispensation~~  
9 ~~of fentanyl. An act relating to eliminating penalties for possession of~~  
10 ~~limited amounts of marijuana by adults 21 years of age and older~~

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

12 ~~Sec. 1. 18 V.S.A. § 4233a is added to read:~~

13 ~~§ 4233a. FENTANYL~~

14 ~~(a) Possession~~

15 ~~(1) A person knowingly and unlawfully possessing fentanyl shall be~~  
16 ~~imprisoned not more than one year or fined not more than \$2,000.00, or both.~~

17 ~~(2) A person knowingly and unlawfully possessing fentanyl in an~~  
18 ~~amount consisting of 20 milligrams or more of one or more preparations,~~  
19 ~~compounds, mixtures, or substances containing fentanyl shall be imprisoned~~  
20 ~~not more than five years or fined not more than \$100,000.00, or both.~~

21 ~~(3) A person knowingly and unlawfully possessing fentanyl in an~~

1 ~~amount consisting of 40 milligrams gram or more of one or more preparations,~~  
2 ~~compounds, mixtures or substances containing fentanyl shall be imprisoned~~  
3 ~~not more than 10 years or fined not more than \$250,000.00, or both.~~

4 (4) ~~A person knowingly and unlawfully possessing fentanyl in an~~  
5 ~~amount consisting of 70 milligrams or more of one or more preparations,~~  
6 ~~compounds, mixtures, or substances containing fentanyl shall be imprisoned~~  
7 ~~not more than 20 years or fined not more than \$1,000,000.00, or both.~~

8 (b) Selling or dispensing

9 (1) ~~A person knowingly and unlawfully dispensing fentanyl shall be~~  
10 ~~imprisoned not more than three years or fined not more than \$75,000.00, or~~  
11 ~~both. A person knowingly and unlawfully selling fentanyl shall be imprisoned~~  
12 ~~not more than five years or fined not more than \$100,000.00, or both.~~

13 (2) ~~A person knowingly and unlawfully selling or dispensing fentanyl in~~  
14 ~~an amount consisting of 20 milligrams or more of one or more preparations,~~  
15 ~~compounds, mixtures, or substances containing fentanyl shall be imprisoned~~  
16 ~~not more than 10 years or fined not more than \$250,000.00, or both.~~

17 (3) ~~A person knowingly and unlawfully selling or dispensing fentanyl in~~  
18 ~~an amount consisting of 40 milligrams or more of one or more preparations,~~  
19 ~~compounds, mixtures, or substances containing fentanyl shall be imprisoned~~  
20 ~~not more than 20 years or fined not more than \$1,000,000.00, or both.~~

21 ~~(c) Trafficking. A person knowingly and unlawfully possessing fentanyl in~~

1 ~~an amount consisting of 40 milligrams or more of one or more preparations~~  
2 ~~compounds, mixtures, or substances containing fentanyl with the intent to sell~~  
3 ~~or dispense the fentanyl shall be imprisoned not more than 30 years or fined~~  
4 ~~not more than \$1,000,000.00, or both. There shall be a permissive inference~~  
5 ~~that a person who possesses fentanyl in an amount of 40 milligrams or more of~~  
6 ~~one or more preparations, compounds, mixtures, or substances containing~~  
7 ~~fentanyl intends to sell or dispense the fentanyl. The amount of possessed~~  
8 ~~fentanyl under this subsection to sustain a charge of conspiracy under~~  
9 ~~13 V.S.A. § 1404 shall be no less than 70 milligrams in the aggregate.~~

10 (d) Transportation into the State. In addition to any other penalties  
11 provided by law, a person knowingly and unlawfully transporting more than  
12 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the  
13 fentanyl shall be imprisoned not more than 10 years or fined not more than  
14 \$100,000.00, or both.

15 Sec. 2. 18 V.S.A. § 4234 is amended to read:

16 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

17 (a) Possession.

18 (1) A person knowingly and unlawfully possessing a depressant,  
19 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be  
20 imprisoned not more than one year or fined not more than \$2,000.00, or both.

21 ~~(2) A person knowingly and unlawfully possessing a depressant,~~

1 ~~stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting~~  
2 of 100 times a benchmark unlawful dosage or its equivalent as determined by  
3 the ~~board of health~~ Board of Health by rule shall be imprisoned not more than  
4 five years or fined not more than \$25,000.00, or both.

5 (3) A person knowingly and unlawfully possessing a depressant,  
6 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting  
7 of 1,000 times a benchmark unlawful dosage or its equivalent as determined  
8 by the ~~board of health~~ Board of Health by rule shall be imprisoned not more  
9 than 10 years or fined not more than \$100,000.00, or both.

10 (4) A person knowingly and unlawfully possessing a depressant,  
11 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting  
12 of 10,000 times a benchmark unlawful dosage or its equivalent as determined  
13 by the ~~board of health~~ Board of Health by rule shall be imprisoned not more  
14 than 20 years or fined not more than \$500,000.00, or both.

15 (b) Selling or dispensing.

16 (1) A person knowingly and unlawfully dispensing a depressant,  
17 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be  
18 imprisoned not more than three years or fined not more than \$75,000.00, or  
19 both. A person knowingly and unlawfully selling a depressant, stimulant, or  
20 narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not  
21 ~~more than five years or fined not more than \$25,000.00, or both.~~

1 ~~(2) A person knowingly and unlawfully selling or dispensing a~~  
2 ~~depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,~~  
3 ~~consisting of 100 times a benchmark unlawful dosage or its equivalent as~~  
4 ~~determined by the ~~board of health~~ Board of Health by rule shall be imprisoned~~  
5 ~~not more than 10 years or fined not more than \$100,000.00, or both.~~

6 (3) A person knowingly and unlawfully selling or dispensing a  
7 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,  
8 consisting of 1,000 times a benchmark unlawful dosage or its equivalent as  
9 determined by the ~~board of health~~ Board of Health by rule shall be imprisoned  
10 not more than 20 years or fined not more than \$500,000.00, or both.

11 Sec. 3. EFFECTIVE DATE

12 ~~This act shall take effect on July 1, 2017.~~

~~Sec. 1. 18 V.S.A. § 4233a is added to read:~~

§ 4233a. FENTANYL

(a) Possession.

(1) A person knowingly and unlawfully possessing fentanyl shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

~~(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.~~

~~(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.~~

~~(c) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.~~

~~(d) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.~~

Sec. 2. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

(a) Possession.

(1) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.

(2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(3) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by

~~the board of health Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.~~

~~(4) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 10,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.~~

~~(b) Selling or dispensing.~~

~~(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.~~

~~(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.~~

~~(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.~~

~~Sec. 3. 13 V.S.A. § 1404 is amended to read:~~

~~§ 1404. CONSPIRACY~~

~~(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.~~

~~(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official ~~acting in an official capacity or a person acting in cooperation with a law~~~~

~~enforcement official and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.~~

~~(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:~~

~~(1) murder in the first or second degree;~~

~~(2) arson under sections 501-504 and 506 of this title;~~

~~(3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;~~

~~(4) receiving stolen property under sections 2561-2564 of this title; or~~

~~(5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:~~

~~(A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;~~

~~(B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;~~

~~(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;~~

~~(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; or~~

~~(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine;~~  
~~or~~

~~(F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.~~

~~Sec. 4. 18 V.S.A. § 4234b is amended to read:~~

~~§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE~~

~~\* \* \*~~

~~(c) Electronic registry system.~~

~~(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.~~



~~(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.~~

~~(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.~~

~~(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.~~

~~(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:~~

~~(i) the name and address of the purchaser;~~

~~(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;~~

~~(iii) the date and time of purchase;~~

~~(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and~~

~~(v) the name of the person selling or furnishing the drug product.~~

~~(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).~~

~~(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).~~

~~(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.~~

~~(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:~~

~~(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and~~

~~(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).~~

~~(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:~~

~~(A) for a first violation be assessed a civil penalty of not more than \$100.00; and~~

~~(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.~~

~~(d) This section shall not apply to a manufacturer which that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.~~

~~(e) As used in this section:~~

~~(1) "Distributor" means a person, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.~~

~~(2) "Knowingly" means having actual knowledge of the relevant facts.~~

~~(3) "Manufacturer" means a person who produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.~~

~~(4) "Wholesaler" means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.~~

~~Sec. 5. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2017.~~

Sec. 5. EFFECTIVE DATES

~~This section and Sec. 4 (ephedrine and pseudoephedrine) shall take effect on passage. The remaining sections shall take effect on July 1, 2017.~~

Sec. 1. LEGISLATIVE INTENT; CIVIL AND CRIMINAL PENALTIES

~~It is the intent of the General Assembly to eliminate all penalties for possession of one ounce or less of marijuana and two mature and four immature marijuana plants for a person who is 21 years of age or older while retaining criminal penalties for possession, dispensing and sale of larger amounts of marijuana. This act also retains civil penalties for possession of marijuana by a person under 21 years of age, which are the same as for~~

possession of alcohol by a person under 21 years of age.

Sec. 2. 18 V.S.A. § 4201 is amended to read:

§ 4201. DEFINITIONS

*As used in this chapter, unless the context otherwise requires:*

\* \* \*

~~(15)(A) “Marijuana” means any plant material of the genus cannabis or any preparation, compound, or mixture thereof except:~~

~~(A) sterilized seeds of the plant;~~

~~(B) fiber produced from the stalks; or~~

~~(C) hemp or hemp products, as defined in 6 V.S.A. § 562 all parts of the plant Cannabis sativa L., except as provided by subdivision (B) of this subdivision (15), whether growing or harvested, and includes:~~

~~(i) the seeds of the plant;~~

~~(ii) the resin extracted from any part of the plant; and~~

~~(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.~~

~~(B) “Marijuana” does not include:~~

~~(i) the mature stalks of the plant and fiber produced from the stalks;~~

~~(ii) oil or cake made from the seeds of the plant;~~

~~(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;~~

~~(iv) the sterilized seed of the plant that is incapable of germination; or~~

~~(v) hemp or hemp products, as defined in 6 V.S.A. § 562.~~

\* \* \*

~~(43) “Immature marijuana plant” means a female marijuana plant that has not flowered and that does not have buds that may be observed by visual examination.~~

~~(44) “Mature marijuana plant” means a female marijuana plant that has flowered and that has buds that may be observed by visual examination.~~

Sec. 3. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

*(a) Possession and cultivation.*

*(1)(A) No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate more than two mature marijuana plants or four immature marijuana plants. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.*

*(B) A person convicted of a second or subsequent offense of knowingly and unlawfully possessing more than one ounce of marijuana or more than five grams of hashish or cultivating more than two mature marijuana plants or four immature marijuana plants shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.*

*(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.*

*(2) A person knowingly and unlawfully possessing two ounces of marijuana or 10 grams of hashish or knowingly and unlawfully cultivating more than ~~three plants~~ of four mature marijuana plants or eight immature marijuana plants shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.*

*(3) A person knowingly and unlawfully possessing more than one pound ~~or more~~ of marijuana or more than 2.8 ounces ~~or more~~ of hashish or knowingly and unlawfully cultivating more than ~~10 plants~~ of six mature marijuana plants or 12 immature marijuana plants shall be imprisoned not more than five years or fined not more than ~~\$100,000.00~~ \$10,000.00, or both.*

*(4) A person knowingly and unlawfully possessing more than 10 pounds ~~or more~~ of marijuana or more than one pound ~~or more~~ of hashish or knowingly and unlawfully cultivating more than ~~25 plants~~ of 12 mature marijuana plants or 24 immature marijuana plants shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.*

*(5) If a court fails to provide the defendant with notice of collateral*

*consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.*

*(6) The amounts of marijuana in this subsection shall not include marijuana cultivated, harvested, and stored in accordance with section 4230e of this title.*

\* \* \*

*Sec. 4. 18 V.S.A. § 4230a is amended to read:*

*§ 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE OR OLDER; CIVIL VIOLATION*

*~~(a)(1) A person 21 years of age or older who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:~~*

*~~(1) not more than \$200.00 for a first offense;~~*

*~~(2) not more than \$300.00 for a second offense;~~*

*~~(3) not more than \$500.00 for a third or subsequent offense.~~*

*~~(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish and two mature marijuana plants or fewer or four immature marijuana plants or fewer or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law. The one-ounce limit of marijuana or five grams of hashish that may be possessed by a person 21 years of age or older shall not include marijuana cultivated, harvested, and stored in accordance with section 4230e of this title.~~*

*~~(2)(A) A violation of this section shall not result in the creation of a criminal history record of any kind. A person shall not consume marijuana in a public place. "Public place" means any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation as defined in 9 V.S.A. § 4501, and any place where the possession of a lighted tobacco product is prohibited by law.~~*

*~~(B) A person who violates this subdivision (a)(2) shall be assessed a civil penalty as follows:~~*

- (i) not more than \$100.00 for a first offense;
- (ii) not more than \$200.00 for a second offense; and
- (iii) not more than \$500.00 for a third or subsequent offense.

~~(e)(1)(b) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.~~

~~(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and subject to seizure and forfeiture unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).~~

~~(3) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.~~

~~(d) If a person suspected of violating this section contests the presence of cannabinoids within 10 days of receiving a civil citation, the person may request that the State Crime Laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the State shall reimburse the person at state expense.~~

(1) exempt a person from arrest, citation, or prosecution for being under the influence of marijuana while operating a vehicle of any kind or for consuming marijuana while operating a motor vehicle;

(2) repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana or for consuming marijuana while operating a motor vehicle;

(3) limit the authority of primary and secondary schools to impose administrative penalties for the possession of marijuana on school property;

(4) prohibit a municipality from adopting a civil ordinance to provide additional penalties for consumption of marijuana in a public place;

(5) prohibit a landlord from banning possession or use of marijuana in a lease agreement; or

(6) allow an inmate of a correctional facility to possess or use marijuana or to limit the authority of law enforcement, the courts, the Department of Corrections, or the Parole Board to impose penalties on offenders who use marijuana in violation of a court order, conditions of

furlough, parole, or rules of a correctional facility.

~~(c)~~(1) *A law enforcement officer is authorized to detain a person if:*

*(A) the officer has reasonable grounds to believe the person has violated subsection (b) of this section; and*

*(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.*

*(2) The person may be detained only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.*

~~(d)~~ *Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be deposited in the Drug Task Force Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Department of Public Safety for the funding of law enforcement officers on the Drug Task Force, except for a \$12.50 administrative charge for each violation which shall be deposited in the Court Technology Special Fund, in accordance with 13 V.S.A. § 7252. The remaining 50 percent shall be deposited in the Youth Substance Abuse Safety Program Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.*

*(e) Nothing in this section shall be construed to do any of the following:*

*(1) require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace;*

*(2) prevent an employer from adopting a policy that prohibits the use of marijuana in the workplace;*

*(3) create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees; or*

*(4) prevent an employer from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises.*

*Sec. 5. 18 V.S.A. § 4230b is amended to read:*

*§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS  
OF AGE; CIVIL VIOLATION*

*(a) Offense. A person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish or two mature marijuana plants or fewer or four immature marijuana plants or fewer commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:*

*(1) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 30 days, for a first offense; and*

*(2) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a second or subsequent offense.*

*\* \* \**

*Sec. 6. REPEAL*

*18 V.S.A. § 4230d (marijuana possession by a person under 16 years of age; delinquency) is repealed.*

*Sec. 7. 18 V.S.A. § 4230e is added to read:*

*§ 4230e. CULTIVATION OF MARIJUANA BY A PERSON 21 YEARS OF  
AGE OR OLDER*

*(a)(1) Except as otherwise provided in this section, a person 21 years of age or older who cultivates no more than two mature marijuana plants and four immature marijuana plants shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.*

*(2) Each dwelling unit shall be limited to two mature marijuana plants and four immature marijuana plants regardless of how many persons 21 years of age or older reside in the dwelling unit. As used in this section, "dwelling unit" means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.*

*(3) Any marijuana harvested from the plants allowed pursuant to this subsection shall not count toward the one-ounce possession limit in section 4230a of this title provided it is stored in an indoor facility on the property*



where the marijuana was cultivated and reasonable precautions are taken to prevent unauthorized access to the marijuana.

(4) Cultivation in excess of the limits provided in this subsection shall be punished in accordance with section 4230 of this title.

(b)(1) Personal cultivation of marijuana only shall occur:

(A) on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property; and

(B) in an enclosure that is screened from public view and is secure so that access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

(2) A person who violates this subsection shall be assessed a civil penalty as follows:

(A) not more than \$100.00 for a first offense;

(B) not more than \$200.00 for a second offense; and

(C) not more than \$500.00 for a third or subsequent offense.

Sec. 8. 18 V.S.A. § 4230g is added to read:

§ 4230g. FURNISHING MARIJUANA TO A PERSON UNDER  
21 YEARS OF AGE; CRIMINAL OFFENSE

(a) No person shall:

(1) furnish marijuana to a person under 21 years of age; or

(2) knowingly enable the consumption of marijuana by a person under 21 years of age.

(b) As used in this section, “enable the consumption of marijuana” means creating a direct and immediate opportunity for a person to consume marijuana.

(c) Except as provided in subsection (d) of this section, a person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(d) A person who violates subsection (a) of this section, where the person under 21 years of age, while operating a motor vehicle on a public highway, causes death or serious bodily injury to himself or herself or to another person as a result of the violation, shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(e) This section shall not apply to:

(1) A person under 21 years of age who furnishes marijuana to a person under 21 years of age or who knowingly enables the consumption of marijuana by a person under 21 years of age. Possession of an ounce or less of marijuana by a person under 21 years of age shall be punished in accordance with sections 4230b–4230d of this title and dispensing or selling marijuana shall be punished in accordance with sections 4230 and 4237 of this title.

(2) A dispensary that lawfully provides marijuana to a registered patient or caregiver pursuant to chapter 86 of this title.

Sec. 9. 18 V.S.A. § 4230h is added to read:

§ 4230h. FURNISHING MARIJUANA TO A PERSON UNDER  
21 YEARS OF AGE; CIVIL ACTION FOR DAMAGES

(a) A spouse, child, guardian, employer, or other person who is injured in person, property, or means of support by a person under 21 years of age who is impaired by marijuana, or in consequence of the impairment by marijuana of any person under 21 years of age, shall have a right of action in his or her own name, jointly or severally, against any person or persons who have caused in whole or in part such impairment by furnishing marijuana to a person under 21 years of age.

(b) Upon the death of either party, the action and right of action shall survive to or against the party's executor or administrator. The party injured or his or her legal representatives may bring either a joint action against the impaired person under 21 years of age and the person or persons who furnished the marijuana, or a separate action against either or any of them.

(c) An action to recover for damages under this section shall be commenced within two years after the cause of action accrues, and not after.

(d) In an action brought under this section, evidence of responsible actions taken or not taken is admissible if otherwise relevant.

(e) A defendant in an action brought under this section has a right of contribution from any other responsible person or persons, which may be enforced in a separate action brought for that purpose.

(f) A person who knowingly furnishes marijuana to a person under 21 years of age may be held liable under this section if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the marijuana was under 21 years of age.

Sec. 10. 18 V.S.A. § 4230i is added to read:

§ 4230i. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE  
PROHIBITED

(a) No person shall manufacture concentrated marijuana by chemical extraction or chemical synthesis using butane or hexane unless authorized as a dispensary pursuant to a registration issued by the Department of Public Safety pursuant to chapter 86 of this title.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. A person who violates subsection (a) of this section and causes serious bodily injury to another person shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

Sec. 11. 18 V.S.A. § 4230j is added to read:

§ 4230j. EXCEPTIONS

(a) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2018 and who possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:

(1) not more than \$200.00 for a first offense;

(2) not more than \$300.00 for a second offense;

(3) not more than \$500.00 for a third or subsequent offense.

(b) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2018 and who possesses any of the following commits a misdemeanor and is subject to imprisonment of not more than one year or a fine of not more than \$1,000.00, or both:

(1) more than one ounce, but not more than two ounces of marijuana;

(2) more than five grams, but not more than 10 grams of hashish; or

(3) not more than six mature marijuana plants and 12 immature marijuana plants.

Sec. 12. 18 V.S.A. § 4476 is amended to read:

§ 4476. OFFENSES AND PENALTIES

(a) No person shall sell, possess with intent to sell, or manufacture with intent to sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare,

~~test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a regulated drug in violation of chapter 84 of this title. Whoever violates any provision of this section shall be punished by imprisonment for not more than one year, or by a fine of not more than \$1,000.00, or both.~~

~~(b) Any A person who violates subsection (a) of this section by selling sells drug paraphernalia to a person under 18 years of age shall be imprisoned for not more than two years, or fined not more than \$2,000.00, or both.~~

~~(e)(b) The distribution and possession of needles and syringes as part of an organized community-based needle exchange program shall not be a violation of this section or of chapter 84 of this title.~~

Sec. 13. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR  
POSSESSION OF ALCOHOL OR MARIJUANA

~~(a) A person shall not consume alcoholic beverages or marijuana while operating a motor vehicle on a public highway. As used in this subsection, the prohibition on consumption of marijuana by the operator shall extend to the operator's consumption of secondhand marijuana smoke in the vehicle as a result of another person's consumption of marijuana. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.~~

~~(b) A person operating a motor vehicle on a public highway shall not possess any open container which contains alcoholic beverages or marijuana in the passenger area of the motor vehicle.~~

~~(c) As used in this section, "passenger area" shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.~~

~~(d) A person who violates subsection (a) of this section shall be assessed a civil penalty of not more than \$500.00. A person who violates subsection (b) of this section shall be assessed a civil penalty of not more than ~~\$25.00~~ \$50.00. A person adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to a civil violation for the same actions under subsection (b) of this section.~~

Sec. 14. 23 V.S.A. § 1134a is amended to read:

*§ 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR  
POSSESSION OF ALCOHOL OR MARIJUANA*

*(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume alcoholic beverages or marijuana or possess any open container which contains alcoholic beverages or marijuana in the passenger area of any motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.*

*(b) As used in this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.*

*(c) A person, other than the operator, may possess an open container which contains alcoholic beverages in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.*

*(d) A person who violates this section shall be ~~fined~~ subject to a civil penalty of not more than \$25.00 \$50.00.*

*Sec. 15. 23 V.S.A. § 1134b is amended to read:*

*§ 1134b. ~~SMOKING~~ USING MARIJUANA OR TOBACCO IN A MOTOR  
VEHICLE WITH CHILD PRESENT*

*(a) A person shall not use marijuana as defined in 18 V.S.A. § 4201 or a tobacco substitute as defined in 7 V.S.A. § 1001 or possess a lighted tobacco product ~~or use a tobacco substitute as defined in 7 V.S.A. § 1001~~ in a motor vehicle that is occupied by a child required to be properly restrained in a federally approved child passenger restraining system pursuant to subdivision 1258(a)(1) or (2) of this title.*

*(b) A person who violates subsection (a) of this section shall be subject to a ~~fine~~ civil penalty of not more than \$100.00. No points shall be assessed for a violation of this section.*

*Sec. 16. 33 V.S.A. § 3504 is amended to read:*

*§ 3504. MARIJUANA AND TOBACCO USE PROHIBITED AT CHILD  
CARE FACILITIES*

*(a) No person shall be permitted to use marijuana as defined in 18 V.S.A.*

§ 4201 or to cultivate marijuana, or use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time.

(b) No person shall be permitted to use marijuana as defined in 18 V.S.A. § 4201, tobacco products, or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both ~~indoor~~ indoors and in any outdoor area designated for child care, of a licensed or registered family child care home while children are present and in care. If use of marijuana or smoking of tobacco products or tobacco substitutes occurs on the premises during other times, the family child care home shall notify prospective families prior to enrolling a child in the family child care home that their child will be exposed to an environment in which marijuana, tobacco products, or tobacco substitutes, ~~or both,~~ are used. Cultivation of marijuana in a licensed or registered family child care home is not permitted.

*Sec. 17. DISPARITIES IN ENFORCEMENT OF DRUG LAWS;  
MARIJUANA REGULATORY COMMISSION*

(a) Findings. The General Assembly finds that:

(1) A 2013 report by the American Civil Liberties Union, The War on Marijuana in Black and White, identified Vermont as 15th in the country and first in New England when comparing discrepancies in citation and arrest rates for marijuana possession. The report stated that African-Americans in Vermont were 4.36 times more likely to be cited or arrested for marijuana possession than whites, higher than the national average of African-Americans being 3.73 more likely than whites to be cited or arrested for marijuana possession. Although Vermont later decriminalized possession of small amounts of marijuana, a 2016 report by Human Rights Watch and the ACLU, Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States, found that Vermont had the third-highest racial disparity in drug possession arrest rates in the country despite nearly identical use rates.

(2) In the report, Driving While Black or Brown in Vermont, University of Vermont researchers, examining 2015 data from 29 police agencies covering 78 percent of Vermont's population, found significant disparities in how often African-Americans and Hispanics are stopped, searched, and arrested, as compared to whites and Asians. According to the report, African-American drivers are four times more likely than white drivers to be searched by Vermont police, even though they are less likely to be found with illegal items.

(3) As part of efforts to eliminate implicit bias in Vermont's criminal justice system, policymakers must reexamine the State's drug laws, beginning with its policy on marijuana.

(4) According to a 2014 study conducted by the RAND Corporation, an estimated 80,000 Vermont residents regularly consume marijuana. Except for patients on the Vermont Medical Marijuana Registry, these Vermonters obtain marijuana through a thriving illegal market.

(5) In November 2016, voters in Massachusetts and Maine approved possession and cultivation of marijuana for personal use by adults 21 years of age or older. In July 2018, both states will begin to allow retail sales of marijuana and marijuana-infused products through licensed stores. Canada is expected to act favorably on legislation legalizing marijuana possession and cultivation for adults 18 years of age or older and federal administration officials have cited the summer of 2018 as the date at which licensed retail stores will begin selling marijuana and marijuana-infused products to the public.

(6) By adopting a comprehensive regulatory structure for legalizing and licensing the marijuana market, Vermont can revise drug laws that have a disparate impact on racial minorities, help prevent access to marijuana by youths, better control the safety and quality of marijuana being consumed by Vermonters, and use revenues to support substance use prevention and education and enforcement of impaired driving laws.

(b) Creation. There is created the Marijuana Regulatory Commission.

(c) Membership. The Commission shall be composed of the following nine members:

(1) two current members of the House of Representatives and one member of the public who all shall be appointed by the Speaker of the House;

(2) two current members of the Senate and one member of the public who all shall be appointed by the Committee on Committees;

(3) the Attorney General or designee;

(4) the Secretary of Agriculture, Food and Markets or designee; and

(5) one member appointed by the Governor.

(d) Powers and duties. The Commission shall develop legislation that establishes a comprehensive regulatory and revenue system for an adult-use marijuana market that, when compared to the current illegal marijuana market, increases public safety and reduces harm to public health.

(e) Assistance. The Commission shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office for the purpose of preparing legislation and shall have the technical assistance of the Agency of Agriculture, Food and Markets.

(f) Legislation. On or before November 1, 2017, the Commission shall provide the General Assembly and the Governor with its recommended legislation.

(g) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Commission to occur on or before August 1, 2017.

(2) The members shall elect a chair from the membership.

(3) A majority of the membership shall constitute a quorum.

(4) The Commission shall cease to exist on January 30, 2018.

(h) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than six meetings.

(2) Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

Sec. 18. EFFECTIVE DATES

This section and Sec. 17 shall take effect on passage and the remaining sections shall take effect on July 1, 2018.