

Below is the legislative report requested in Act 195 relating to the benchmarks of unlawful dosages. The Vermont Department of Health was consulted extensively. David Englander, Senior Policy and Legal Advisor and David K. Herlihy, Executive Director -Vermont Board of Medical Practice both contributed to this report. One addition was the desire to increase the criminal penalty for bath salts, creating a felony threshold. David Englander committed the Health Department's efforts and testimony should the Vermont State Police decide to pursue this statutory change.

Finally, the Vermont Drug Task force assisted with the understanding of how benchmarks affected their investigations. Should testimony be requested, a member of the VDTF would be the key in illustrating the practical side of this issue.

Act 195 Benchmarks of Unlawful Dosages:

The purpose of this report is to review the Benchmarks of Unlawful Dosages of various drugs regulated by the State of Vermont. Section 10 of Act 195 requires the Department of Public Safety, in consultation with the Department of Health, to examine 18 V.S.A. § 4234 (depressant, stimulant, narcotic drug) for the purpose of establishing clear dosage amounts for narcotics as they relate to unlawful possession, dispensing, and sale. The Department is asked to consider section 4234 in relation to 18 V.S.A. § 4233 (heroin). The Department shall report its recommendations to the Senate and House Committees on Judiciary on or before December 15, 2014.

Title 18 V.S.A. § 4234 directs the Board of Health to establish a Benchmark Unlawful Dosage for selected stimulants, depressants, and narcotic drugs. The Benchmark of Unlawful Dosage is not a medical or pharmacologic concept with any implication for medical practice. Instead, it is a legal concept established only for this statute. Instead, the benchmarks are intended to aid law enforcement and the medical community with identifying thresholds of unlawful possession, dispensing and sale volumes. In clinical practice, most drugs have more than one legitimate use, and doses vary accordingly. The Benchmark of Unlawful Dosages is not intended to guide or restrict medical practice in any way. These dosages do not represent a standard of practice.

With these principles in mind, the Board of Health defines the Benchmark Unlawful Dosage as the quantity of drugs commonly consumed over a twenty-four hour period for any therapeutic purpose, as established by the manufacturer of the drug.

The following "benchmark unlawful dosages" are established for the following drugs named:

1. Hydrocodone 45mg
2. Codeine 360mg
3. Hydromorphone 24mg
4. Alprazolam 4mg
5. Methylphenidate 60mg
6. Methadone 80mg
7. Phenobarbital 260mg
8. Chlordiazepoxide 100mg
9. Butalbital 300mg
10. Phentermine 37.5mg
11. Flurazepam 30mg
12. Pentobarbital 80mg
13. Oxycodone 20mg
14. Propoxyphene 390mg
15. Morphine 180mg²¹

16. Chlorazepate 90mg
17. Secobarbital 100mg
18. Amylbarbital 100mg
19. Phenmetrazine 75mg
20. Lorazepam 10mg
21. Meperidine (Pethidine) 600mg
22. Pentazocine 100mg
23. Dihydrocodeinone 20mg
24. Temazepam 30mg
25. Triazolam 0.5mg
26. Opium extracts 240mg
27. Tincture of opium 120mg
28. Methamphetamine 25mg
29. Phencyclidine 10mg
30. Amphetamine 30mg
31. Methaqualone (Qualludes) 500mg
32. Methaqualone Hydrochloride (Parest) 500mg
33. Diazepam (Valium) 40mg
34. Diethylpropione (Tenuate, Tepanil)

The list of narcotics above is a comprehensive series that does not need alterations. The newest narcotics, such as Zohydro, according to the Vermont Department of Health, are covered with this current list.

The current threshold for Unlawful Dosage Benchmarks under Title 18 VSA 4234 is in need of adjustment. Currently the threshold amount for felony Possession of Regulated Narcotic, Stimulant and Depressant quantities is more than 100 therapeutic doses. Anything illegally possessed less than 100 therapeutic doses is merely a misdemeanor offense. For Sales of Regulated Narcotic, Stimulant and Depressants any amount sold under 100 therapeutic doses is a first tier felony, but to reach the second tier felony the sale must have involved a quantity greater than 100 therapeutic doses. This poses significant issues during drug sale investigations and would currently cost \$3,000 (purchase amounts only) to reach this threshold. There are additional inconsistencies between both statutes; one imposes a felony for less than 100 therapeutic doses and other warrants a misdemeanor possession for less than 100 therapeutic doses. This reveals the imbalance between the possession and sale statutes.

At the same time street level investigations for Sale of Heroin, for a similar felony law violation (10 year), currently cost from \$80.00 to \$250.00 for selling heroin depending the geographical location within the state. Drug Task Force Investigators have fewer resources to invest financially in sale cases involving over 100 therapeutic doses, limiting most of the prescription pill sale case investigation to only the first tier felony level. Heroin and prescription medications have a similar, and often time overlapping, links relating to sources, supplies and usage. Equal price would not guarantee parity between these two statutes and that should not be the specific goal. However a reduction of therapeutic doses would provide a more balanced investigative field and assist in addressing the Opiate issue more completely, not just under the scope of Heroin sales and possession.

In addition, more uniformity and fairness between the laws pertaining to sale and possession is needed. The ensuing proposition adjusts the therapeutic dose thresholds to meet all these goals;

Narcotic, Stimulant and Depressant-Sale 18VSA 4234

5 yr felony < 50 dosage unit

10 yr felony 50+ dosage unit

20 yr felony 500+ dosage unit

Ex. Possession or Sale of Oxycodone Benchmark-20mg
Percocet 30mg- street value \$45/ pill (\$1.50/mg)
Need 1,005mg (34 pills (30mg))
\$1,500.00 street value

In order to reach 100 dosage units (Oxycodone 20 mg benchmark)

5mg=200 pills

10mg=100 pills

15mg=70 pills

30mg= 34 pills

80mg=13 pills

The following is an outline of the current drug possession/sale statute with an explanation of how the existing Unlawful Dosage Benchmarks are interpreted.

- 1) Narcotic, Stimulant and Depressant-Sale 18VSA 4234(b)
 - (b)(1) 5 yr felony < 100 dosage unit
 - (b)(2) 10 yr felony 100+ dosage unit
 - (b)(3) 20 yr felony 1000+ dosage unit

- 2) Narcotic, Stimulant and Depressant-Possession 18VSA 4234(a)
 - (a)(1) misdemeanor < 100 dosage unit
 - (a)(2) 5 yr felony 100+ dosage unit
 - (a)(3) 10 yr felony 1000+ dosage unit

Ex. Possession or Sale of Oxycodone_ Benchmark-20mg
Percocet 30mg- street value \$45/ pill (\$1.50/mg)
Need 2,010mg (67 pills (30mg))
\$2999.00 street value

In order to reach 100 dosage units (Oxycodone 20 mg benchmark)

5mg=400 pills

10mg=200 pills

15mg=140 pills

30mg= 67 pills

80mg=25 pills

**minimum amounts to reach felony threshold in statute

3) Cocaine-Sale 18VSA 4231 (powder \$80-100/g; crack \$80-100/g but only weighs .4g)
(1 oz powder \$1300-1600; 1 oz crack \$1500-2000)

5 yr felony <2.5 grams

10 yr felony >2.5 grams-\$

20 yr felony 28.3 grams (1 oz or more)-\$

4) Heroin-Sale 18VSA 4233 (\$8-15 / bag; 10 bags to bundle \$80-200)

5 yr felony <200 mg (under 7 bags)

10 yr felony >200mg (7 bags or greater)

20 yr felony > 1 oz (32 bags or greater)

31.9 mg=VFL heroin / bag average

(31.9 x 10 bags (1 bundle)=319 mg)

5) Bath Salts 18VSA 4234

No tiers at this time

Misd for possession

5 yr for sale