

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 170
3 entitled “An act relating to possession and cultivation of marijuana by a person
4 21 years of age or older” respectfully reports that it has considered the same
5 and recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. LEGISLATIVE INTENT; CIVIL AND CRIMINAL PENALTIES

8 It is the intent of the General Assembly to eliminate all penalties for
9 possession of two ounces or less of marijuana for a person who is 21 years of
10 age or older while retaining the current criminal penalties for possession of
11 larger amounts of marijuana and criminal penalties for unauthorized dispensing
12 or sale of marijuana. This act also retains civil penalties for possession of
13 marijuana by a person under 21 years of age, which are the same as for
14 possession of alcohol by a person under 21 years of age.

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

16 § 4201. DEFINITIONS

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

18 * * *

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

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

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

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

4 § 4230. MARIJUANA

5 (a) Possession and cultivation.

6 ~~(1)(A) No person shall knowingly and unlawfully possess more than one~~
7 ~~ounce of marijuana or more than five grams of hashish or cultivate marijuana.~~

8

9 ~~(B)~~ A person convicted of a second or subsequent offense of
10 knowingly and unlawfully possessing more than ~~one ounce~~ two ounces of
11 marijuana or more than ~~five~~ 10 grams of hashish or cultivating more than two
12 mature marijuana plants or seven immature marijuana plants shall be
13 imprisoned not more than ~~two years~~ six months or fined not more than
14 ~~\$2,000.00~~ \$500.00, or both.

15 ~~(C) Upon an adjudication of guilt for a first or second offense under~~
16 ~~this subdivision, the court may defer sentencing as provided in 13 V.S.A.~~
17 ~~§ 7041 except that the court may in its discretion defer sentence without the~~
18 ~~filing of a presentence investigation report and except that sentence may be~~
19 ~~imposed at any time within two years from and after the date of entry of~~
20 ~~deferment. The court may, prior to sentencing, order that the defendant submit~~

1 ~~to a drug assessment screening which may be considered at sentencing in the~~
2 ~~same manner as a presentence report.~~

3 (2) A person knowingly and unlawfully possessing ~~two~~ more than three
4 ~~ounces or more~~ of marijuana or ~~40~~ more than 15 grams ~~or more~~ of hashish or
5 knowingly and unlawfully cultivating more than ~~three~~ four mature marijuana
6 ~~plants of marijuana and~~ or 14 immature marijuana plants shall be imprisoned
7 not more than ~~three years or fined not more than \$10,000.00~~ two years or fined
8 not more than \$2,000.00, or both.

9 (3) A person knowingly and unlawfully possessing more than one pound
10 ~~or more~~ of marijuana or more than 2.8 ounces ~~or more~~ of hashish or knowingly
11 and unlawfully cultivating more than ~~40~~ eight mature marijuana plants ~~of~~ or 28
12 immature marijuana plants shall be imprisoned not more than ~~five~~ three years
13 or fined not more than ~~\$100,000.00~~ \$10,000.00, or both.

14 (4) A person knowingly and unlawfully possessing more than 10 pounds
15 ~~or more~~ of marijuana or more than one pound ~~or more~~ of hashish or knowingly
16 and unlawfully cultivating more than ~~25~~ 10 mature marijuana plants ~~of~~ or 35
17 immature marijuana plants shall be imprisoned not more than ~~45~~ 10 years or
18 fined not more than ~~\$500,000.00~~ \$100,000.00, or both.

19 (5) If a court fails to provide the defendant with notice of collateral
20 consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later
21 at any time shows that the plea and conviction for a violation of this subsection

1 may have or has had a negative consequence, the court, upon the defendant's
2 motion, shall vacate the judgment and permit the defendant to withdraw the
3 plea or admission and enter a plea of not guilty. Failure of the court to advise
4 the defendant of a particular collateral consequence shall not support a motion
5 to vacate.

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

9 * * *

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

11 § 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE
12 OR OLDER; CIVIL VIOLATION

13 (a)(1) A person 21 years of age or older who knowingly and unlawfully
14 possesses ~~one ounce or but less of marijuana or five grams or less of hashish~~
15 any of the following commits a civil violation ~~and:~~

16 (A) more than two ounces, but not more than three ounces of
17 marijuana;

18 (B) more than 10 grams, but not more than 15 grams of hashish; or

19 (C) more than two mature marijuana plants and seven immature
20 marijuana plants, but not more than four mature marijuana plants or 14
21 immature marijuana plants.

1 (2) A person who violates subdivision (1) of this subsection shall be
2 assessed a civil penalty as follows:

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

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

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

6 ~~(b)(1) Except as otherwise provided in this section, a person 21 years of age~~
7 ~~or older who possesses one ounce or less of marijuana or five grams or less of~~
8 ~~hashish or who possesses paraphernalia for marijuana use and shall not be~~
9 penalized or sanctioned in any other manner by the State or any of its political
10 subdivisions or denied any right or privilege under State law.

11 ~~(2) A violation of this section shall not result in the creation of a~~
12 ~~criminal history record of any kind.~~

13 (b) Second or subsequent violations of subdivision (1) of subsection (a)
14 shall be punished in accordance with subdivision 4230(a)(1)(A) of this title.

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

20 (2) This section is not intended to affect the search and seizure laws
21 afforded to duly authorized law enforcement officers under the laws of this

1 ~~State. Marijuana is contraband pursuant to section 4242 of this title and~~
2 ~~possessed in violation of this title is contraband and subject to seizure and~~
3 ~~forfeiture unless possessed in compliance with chapter 86 of this title~~
4 ~~(therapeutic use of cannabis).~~

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

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

13 (e)(1) A law enforcement officer is authorized to detain a person if:

14 (A) the officer has reasonable grounds to believe the person has
15 violated this section; and

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

18 (2) The person may be detained only until the person identifies himself
19 or herself satisfactorily to the officer or is properly identified. If the officer is
20 unable to obtain the identification information, the person shall forthwith be
21 brought before a judge in the Criminal Division of the Superior Court for that

1 purpose. A person who refuses to identify himself or herself to the Court on
2 request shall immediately and without service of an order on the person be
3 subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

4 (f) Fifty percent of the civil penalties imposed by the Judicial Bureau for
5 violations of this section shall be deposited in the Drug Task Force Special
6 Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7,
7 subchapter 5, and available to the Department of Public Safety for the funding
8 of law enforcement officers on the Drug Task Force, except for a \$12.50
9 administrative charge for each violation which shall be deposited in the Court
10 Technology Special Fund, in accordance with 13 V.S.A. § 7252. The
11 remaining 50 percent shall be deposited in the Youth Substance Abuse Safety
12 Program Special Fund, hereby created to be managed pursuant to 32 V.S.A.
13 chapter 7, subchapter 5, and available to the Court Diversion Program for
14 funding of the Youth Substance Abuse Safety Program as required by section
15 4230b of this title.

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

17 § 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS
18 OF AGE; CIVIL VIOLATION

19 (a) Offense. A person under 21 years of age who knowingly and
20 unlawfully possesses ~~one ounce~~ two ounces or less of marijuana or ~~five~~ 10
21 grams or less of hashish or two mature marijuana plants or fewer or seven

1 immature marijuana plants or fewer commits a civil violation and shall be
2 referred to the Court Diversion Program for the purpose of enrollment in the
3 Youth Substance Abuse Safety Program. A person who fails to complete the
4 program successfully shall be subject to:

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

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

11 * * *

12 Sec. 6. 18 V.S.A. § 4230d is amended to read:

13 § 4230d. MARIJUANA POSSESSION BY A PERSON UNDER 16 YEARS
14 OF AGE; DELINQUENCY

15 No person shall knowingly and unlawfully possess marijuana. A person
16 under ~~the age of~~ 16 years of age who knowingly and unlawfully possesses ~~one~~
17 ~~ounce~~ two ounces or less of marijuana or ~~five~~ 10 grams or less of hashish or
18 two mature marijuana plants or fewer or seven immature marijuana plants or
19 fewer commits a delinquent act and shall be subject to 33 V.S.A. chapter 52.

20 The person shall be provided the opportunity to participate in the Court

1 Diversion Program unless the prosecutor states on the record why a referral to
2 the Court Diversion Program would not serve the ends of justice.

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

4 § 4230e. POSSESSION OF MARIJUANA BY A PERSON 21 YEARS OF
5 AGE OR OLDER

6 (a)(1) Except as otherwise provided in this title, a person 21 years of age or
7 older who possesses two ounces or less of marijuana or 10 grams or less of
8 hashish and two mature marijuana plants or fewer or seven immature
9 marijuana plants or fewer shall not be penalized or sanctioned in any manner
10 by the State or any of its political subdivisions or denied any right or privilege
11 under State law.

12 (2) The two-ounce limit of marijuana that may be possessed by a person
13 21 years of age or older shall not include marijuana cultivated, harvested, and
14 stored in accordance with section 4230f of this title.

15 (b) A person shall not consume marijuana or hashish in a public place.
16 “Public place” means any street, alley, park, sidewalk, public building other
17 than individual dwellings, any place of public accommodation as defined in
18 9 V.S.A. § 4501, and any place where the possession of a lighted tobacco
19 product is prohibited pursuant to section 1421 of this title or chapter 37 of this
20 title. A person who violates this subsection shall be assessed a civil penalty as
21 follows:

- 1 (1) not more than \$100.00 for a first offense;
- 2 (2) not more than \$200.00 for a second offense; and
- 3 (3) not more than \$500.00 for a third or subsequent offense.

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

5 § 4230f. CULTIVATION OF MARIJUANA BY A PERSON 21 YEARS OF
6 AGE OR OLDER

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

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

17 (3) Any marijuana harvested from the plants allowed pursuant to this
18 subsection shall not count toward the two ounce possession limit in section
19 4229a of this title provided it is stored in a secure indoor facility on the
20 property where the marijuana was cultivated.

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

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

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

6 (B) in an enclosure that is screened from public view.

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

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

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

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

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

13 § 4230g. FURNISHING MARIJUANA TO A PERSON UNDER

14 21 YEARS OF AGE; CRIMINAL OFFENSE

15 (a) No person shall:

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

17 (2) knowingly enable the consumption of marijuana by a person under
18 21 years of age.

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

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

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

9 (e) This section shall not apply to:

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

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

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

2 § 4230h. FURNISHING MARIJUANA TO A PERSON UNDER
3 21 YEARS OF AGE; CIVIL ACTION FOR DAMAGES

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

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

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

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

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

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

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

9 § 4230i. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE

10 PROHIBITED

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

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

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

2 § 4476. OFFENSES AND PENALTIES

3 (a) ~~No person shall sell, possess with intent to sell, or manufacture with~~
4 ~~intent to sell, drug paraphernalia, knowing, or under circumstances where one~~
5 ~~reasonably should know, that it will be used to plant, propagate, cultivate,~~
6 ~~grow, harvest, manufacture, compound, convert, produce, process, prepare,~~
7 ~~test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or~~
8 ~~otherwise introduce into the human body a regulated drug in violation of~~
9 ~~chapter 84 of this title. Whoever violates any provision of this section shall be~~
10 ~~punished by imprisonment for not more than one year, or by a fine of not more~~
11 ~~than \$1,000.00, or both.~~

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

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

18 Sec. 13. EFFECTIVE DATE

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

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE