

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 one ounce or less of marijuana for a person who is 21 years of  
10 age or older while retaining civil and criminal penalties for possession of larger  
11 amounts of marijuana and criminal penalties for unauthorized dispensing or  
12 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           ~~(B) fiber produced from the stalks; or~~

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

5                     (i) the seeds of the plant;

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

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

9           (B) “Marijuana” does not include:

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

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

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

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

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

18   \* \* \*

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

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~~ two ounces of marijuana or more than ~~five~~ 10 grams of hashish or  
8           cultivate more than three mature marijuana plants or six immature marijuana  
9           plants. For a first offense under this subdivision (A), a person shall be  
10          provided the opportunity to participate in the Court Diversion Program unless  
11          the prosecutor states on the record why a referral to the Court Diversion  
12          Program would not serve the ends of justice. A person convicted of a first  
13          offense under this subdivision shall be imprisoned not more than six months or  
14          fined not more than \$500.00, or both.

15          (B) A person convicted of a second or subsequent offense of  
16          knowingly and unlawfully possessing more than ~~one ounce~~ two ounces of  
17          marijuana or more than ~~five~~ 10 grams of hashish or cultivating more than three  
18          mature marijuana plants or six immature marijuana plants shall be imprisoned  
19          not more than two years or fined not more than \$2,000.00, or both.

20          (C) Upon an adjudication of guilt for a first or second offense under  
21          this subdivision, the court may defer sentencing as provided in 13 V.S.A.

1 § 7041 except that the court may in its discretion defer sentence without the  
2 filing of a presentence investigation report and except that sentence may be  
3 imposed at any time within two years from and after the date of entry of  
4 deferment. The court may, prior to sentencing, order that the defendant submit  
5 to a drug assessment screening which may be considered at sentencing in the  
6 same manner as a presentence report.

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

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

16 ~~(4)~~(3) A person knowingly and unlawfully possessing more than  
17 10 pounds ~~or more~~ of marijuana or more than one pound ~~or more~~ of hashish or  
18 knowingly and unlawfully cultivating more than ~~25 plants of~~ 12 mature  
19 marijuana plants or 24 immature marijuana plants shall be imprisoned not  
20 more than 15 years or fined not more than \$500,000.00, or both.

1           (5)(4) If a court fails to provide the defendant with notice of collateral  
2 consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later  
3 at any time shows that the plea and conviction for a violation of this subsection  
4 may have or has had a negative consequence, the court, upon the defendant's  
5 motion, shall vacate the judgment and permit the defendant to withdraw the  
6 plea or admission and enter a plea of not guilty. Failure of the court to advise  
7 the defendant of a particular collateral consequence shall not support a motion  
8 to vacate.

9           (5) The amounts of marijuana in this subsection shall not include  
10 marijuana cultivated, harvested, and stored in accordance with section 4230f of  
11 this title.

12                                 \* \* \*

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

14         § 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE  
15                         OR OLDER; CIVIL VIOLATION

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

19                                 (A) more than one ounce, but not more than two ounces of  
20 marijuana;

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

1            (C) more than two mature marijuana plants and four immature  
2 marijuana plants, but not more than three mature marijuana plants or six  
3 immature marijuana plants.

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

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

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

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

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

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

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

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

1 concerning the operation of vehicles of any kind while under the influence of  
2 marijuana.

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

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

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

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

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

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

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

8           (f) Fifty percent of the civil penalties imposed by the Judicial Bureau for  
9           violations of this section shall be deposited in the Drug Task Force Special  
10          Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7,  
11          subchapter 5, and available to the Department of Public Safety for the funding  
12          of law enforcement officers on the Drug Task Force, except for a \$12.50  
13          administrative charge for each violation which shall be deposited in the Court  
14          Technology Special Fund, in accordance with 13 V.S.A. § 7252. The  
15          remaining 50 percent shall be deposited in the Youth Substance Abuse Safety  
16          Program Special Fund, hereby created to be managed pursuant to 32 V.S.A.  
17          chapter 7, subchapter 5, and available to the Court Diversion Program for  
18          funding of the Youth Substance Abuse Safety Program as required by section  
19          4230b of this title.



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

2 § 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS  
3 OF AGE; CIVIL VIOLATION

4 (a) Offense. A person under 21 years of age who knowingly and  
5 unlawfully possesses ~~one ounce~~ two ounces or less of marijuana or ~~five~~ 10  
6 grams or less of hashish or three mature marijuana plants or fewer or six  
7 immature marijuana plants or fewer commits a civil violation and shall be  
8 referred to the Court Diversion Program for the purpose of enrollment in the  
9 Youth Substance Abuse Safety Program. A person who fails to complete the  
10 program successfully shall be subject to:

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

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

17 \* \* \*

18 **Sec. 6. REPEAL**

19 18 V.S.A. § 4230d (Marijuana possession by a person under 16 years of  
20 age; delinquency) is repealed.

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

2 § 4230e. POSSESSION OF MARIJUANA BY A PERSON 21 YEARS OF  
3 AGE OR OLDER

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

10 (2) The one-ounce limit of marijuana that may be possessed by a person  
11 21 years of age or older shall not include marijuana cultivated, harvested, and  
12 stored in accordance with section 4230f of this title.

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

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

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

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

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

3           § 4230f. CULTIVATION OF MARIJUANA BY A PERSON 21 YEARS OF  
4                           AGE OR OLDER

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

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

15           (3) Any marijuana harvested from the plants allowed pursuant to this  
16           subsection shall not count toward the one-ounce possession limit in section  
17           4229a of this title provided it is stored in **an indoor facility on the property**  
18           **where the marijuana was cultivated and reasonable precautions are taken to**  
19           **prevent unauthorized access to the marijuana.**

20           (4) Cultivation in excess of the limits provided in this subsection shall  
21           be punished in accordance with sections 4230 and 4230a of this title.

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

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

4                (B) in an enclosure that is screened from public view and reasonable  
5 precautions are taken to prevent unauthorized access to the marijuana.

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

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

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

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

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

12        § 4230g. FURNISHING MARIJUANA TO A PERSON UNDER  
13                21 YEARS OF AGE; CRIMINAL OFFENSE

14                (a) No person shall:

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

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

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



1 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

3

Representative \_\_\_\_\_

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FOR THE COMMITTEE