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H.797

Introduced by Representatives Colburn of Burlington, Willhoit of  
St. Johnsbury, and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Crimes; possession and control of regulated drugs

Statement of purpose of bill as introduced: This bill proposes to restructure  
drug possession laws moving from a graduated penalty structure based on the  
amount possessed to a two-tier structure of categorizing possession as a  
misdemeanor and possession with intent to sell as a felony.

An act relating to unlawful possession of a regulated drug

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

Sec. 1. 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

1 the record why a referral to the Court Diversion Program would not serve the  
2 ends of justice. A person convicted of a first offense under this subdivision  
3 shall be imprisoned not more than six months or fined not more than \$500.00,  
4 or both.

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

10 (C) Upon an adjudication of guilt for a first or second offense under  
11 this subdivision, the court may defer sentencing as provided in 13 V.S.A.  
12 § 7041, except that the court may in its discretion defer sentence without the  
13 filing of a presentence investigation report and except that sentence may be  
14 imposed at any time within two years from and after the date of entry of  
15 deferment. The court may, prior to sentencing, order that the defendant submit  
16 to a drug assessment screening, which may be considered at sentencing in the  
17 same manner as a presentence report.

18 (2) A person knowingly and unlawfully possessing ~~two ounces of~~  
19 marijuana or ~~10 grams of hashish or knowingly and unlawfully cultivating~~  
20 ~~more than four mature marijuana plants or eight immature marijuana plants~~

1 with intent to sell shall be imprisoned not more than three years or fined not  
2 more than \$10,000.00, or both.

3 (3) ~~A person knowingly and unlawfully possessing more than one pound~~  
4 ~~of marijuana or more than 2.8 ounces of hashish or knowingly and unlawfully~~  
5 ~~cultivating more than six mature marijuana plants or 12 immature marijuana~~  
6 ~~plants shall be imprisoned not more than five years or fined not more than~~  
7 ~~\$10,000.00, or both. [Repealed.]~~

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

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

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

4           (b) Selling or dispensing.

5           (1) A person knowingly and unlawfully selling marijuana or hashish  
6 shall be imprisoned not more than two years or fined not more than  
7 \$10,000.00, or both.

8           (2) A person knowingly and unlawfully selling or dispensing more than  
9 one ounce of marijuana or five grams or more of hashish shall be imprisoned  
10 not more than five years or fined not more than \$100,000.00, or both.

11           (3) A person knowingly and unlawfully selling or dispensing one pound  
12 or more of marijuana or 2.8 ounces or more of hashish shall be imprisoned not  
13 more than 15 years or fined not more than \$500,000.00, or both.

14           (c) Trafficking. A person knowingly and unlawfully possessing 50 pounds  
15 or more of marijuana or five pounds or more of hashish with the intent to sell  
16 or dispense the marijuana or hashish shall be imprisoned not more than  
17 30 years or fined not more than \$1,000,000.00, or both. There shall be a  
18 permissive inference that a person who possesses 50 pounds or more of  
19 marijuana or five pounds or more of hashish intends to sell or dispense the  
20 marijuana or hashish.

1 (d) Only the portion of a marijuana-infused product that is attributable to  
2 marijuana shall count toward the possession limits of this section. The weight  
3 of marijuana that is attributable to marijuana-infused products shall be  
4 determined according to methods set forth in rule by the Department of Public  
5 Safety in accordance with chapter 86 of this title (therapeutic use of cannabis).  
6 Sec. 2. 18 V.S.A. § 4231 is amended to read:

7 § 4231. COCAINE

8 (a) Possession.

9 (1) A person knowingly and unlawfully possessing cocaine shall be  
10 imprisoned not more than one year or fined not more than \$2,000.00, or both.

11 (2) A person knowingly and unlawfully possessing cocaine ~~in an~~  
12 ~~amount consisting of 2.5 grams or more of one or more preparations,~~  
13 ~~compounds, mixtures, or substances containing cocaine~~ with intent to sell shall  
14 be imprisoned not more than five years or fined not more than \$100,000.00,  
15 or both.

16 (3) ~~A person knowingly and unlawfully possessing cocaine in an~~  
17 ~~amount consisting of one ounce or more of one or more preparations,~~  
18 ~~compounds, mixtures, or substances containing cocaine shall be imprisoned~~  
19 ~~not more than 10 years or fined not more than \$250,000.00, or both.~~

20 [Repealed.]

21 (4) ~~[Deleted.]~~ [Repealed.]

1 (b) Selling or dispensing.

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

6 (2) A person knowingly and unlawfully selling or dispensing cocaine in  
7 an amount consisting of 2.5 grams or more of one or more preparations,  
8 compounds, mixtures, or substances containing cocaine shall be imprisoned  
9 not more than 10 years or fined not more than \$250,000.00, or both.

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

14 (c)(1) Trafficking. A person knowingly and unlawfully possessing cocaine  
15 in an amount consisting of 150 grams or more of one or more preparations,  
16 compounds, mixtures, or substances containing cocaine with the intent to sell  
17 or dispense the cocaine shall be imprisoned not more than 30 years or fined not  
18 more than \$1,000,000.00, or both. There shall be a permissive inference that a  
19 person who possesses cocaine in an amount consisting of 150 grams or more of  
20 one or more preparations, compounds, mixtures, or substances containing  
21 cocaine intends to sell or dispense the cocaine. The amount of possessed

1 cocaine under this subdivision to sustain a charge of conspiracy under  
2 13 V.S.A. § 1404 shall be ~~no~~ not less than 400 grams in the aggregate.

3 (2) A person knowingly and unlawfully possessing crack cocaine in an  
4 amount consisting of 60 grams or more of one or more preparations,  
5 compounds, mixtures, or substances containing crack cocaine with the intent to  
6 sell or dispense the crack cocaine shall be imprisoned not more than 30 years  
7 or fined not more than \$1,000,000.00, or both. There shall be a permissive  
8 inference that a person who possesses crack cocaine in an amount consisting of  
9 60 grams or more of one or more preparations, compounds, mixtures, or  
10 substances containing crack cocaine intends to sell or dispense the crack  
11 cocaine.

12 Sec. 3. 18 V.S.A. § 4232 is amended to read:

13 § 4232. LSD

14 (a) Possession.

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

18 (2) A person knowingly and unlawfully possessing lysergic acid  
19 diethylamide ~~in an amount consisting of 100 milligrams or more of one or~~  
20 ~~more preparations, compounds, mixtures, or substances containing lysergic~~

1     ~~acid diethylamide~~ with intent to sell shall be imprisoned not more than five  
2     years or fined not more than \$25,000.00, or both.

3             (3) ~~A person knowingly and unlawfully possessing lysergic acid~~  
4     ~~diethylamide in an amount consisting of one gram or more of one or more~~  
5     ~~preparations, compounds, mixtures, or substances containing lysergic acid~~  
6     ~~diethylamide shall be imprisoned not more than 10 years or fined not more~~  
7     ~~than \$100,000.00, or both. [Repealed.]~~

8             (4) ~~A person knowingly and unlawfully possessing lysergic acid~~  
9     ~~diethylamide in an amount consisting of 10 grams or more of one or more~~  
10    ~~preparations, compounds, mixtures, or substances containing lysergic acid~~  
11    ~~diethylamide shall be imprisoned not more than 20 years or fined not more~~  
12    ~~than \$500,000.00, or both. [Repealed.]~~

13            (b) Selling or dispensing.

14            (1) A person knowingly and unlawfully dispensing lysergic acid  
15     diethylamide shall be imprisoned not more than three years or fined not more  
16     than \$25,000.00, or both. A person knowingly and unlawfully selling lysergic  
17     acid diethylamide shall be imprisoned not more than five years or fined not  
18     more than \$25,000.00, or both.

19            (2) A person knowingly and unlawfully selling or dispensing lysergic  
20     acid diethylamide in an amount consisting of 100 milligrams or more of one or  
21     more preparations, compounds, mixtures, or substances containing lysergic



1 acid diethylamide shall be imprisoned not more than 10 years or fined not  
2 more than \$100,000.00, or both.

3 (3) A person knowingly and unlawfully selling or dispensing lysergic  
4 acid diethylamide in an amount consisting of one gram or more of one or more  
5 preparations, compounds, mixtures, or substances containing lysergic acid  
6 diethylamide shall be imprisoned not more than 20 years or fined not more  
7 than \$500,000.00, or both.

8 Sec. 4. 18 V.S.A. § 4233 is amended to read:

9 § 4233. HEROIN

10 (a) Possession.

11 (1) A person knowingly and unlawfully possessing heroin shall be  
12 imprisoned not more than one year or fined not more than \$2,000.00, or both.

13 (2) A person knowingly and unlawfully possessing heroin ~~in an amount~~  
14 ~~consisting of 200 milligrams or more of one or more preparations, compounds,~~  
15 ~~mixtures, or substances containing heroin~~ with intent to sell shall be  
16 imprisoned not more than five years or fined not more than \$100,000.00,  
17 or both.

18 (3) ~~A person knowingly and unlawfully possessing heroin in an amount~~  
19 ~~consisting of one gram or more of one or more preparations, compounds,~~  
20 ~~mixtures, or substances containing heroin shall be imprisoned not more than~~  
21 ~~10 years or fined not more than \$250,000.00, or both.~~ [Repealed.]

1           ~~(4) A person knowingly and unlawfully possessing heroin in an amount~~  
2           ~~consisting of two grams or more of one or more preparations, compounds,~~  
3           ~~mixtures, or substances containing heroin shall be imprisoned not more than~~  
4           ~~20 years or fined not more than \$1,000,000.00, or both. [Repealed.]~~

5           (b) Selling or dispensing.

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

10          (2) A person knowingly and unlawfully selling or dispensing heroin in  
11          an amount consisting of 200 milligrams or more of one or more preparations,  
12          compounds, mixtures, or substances containing heroin shall be imprisoned not  
13          more than 10 years or fined not more than \$250,000.00, or both.

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

18          (c) Trafficking. A person knowingly and unlawfully possessing heroin in  
19          an amount consisting of 3.5 grams or more of one or more preparations,  
20          compounds, mixtures, or substances containing heroin with the intent to sell or  
21          dispense the heroin shall be imprisoned not more than 30 years or fined not

1 more than \$1,000,000.00, or both. There shall be a permissive inference that a  
2 person who possesses heroin in an amount of 3.5 grams or more of one or  
3 more preparations, compounds, mixtures, or substances containing heroin  
4 intends to sell or dispense the heroin. The amount of possessed heroin under  
5 this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall  
6 be ~~no~~ not less than 10 grams in the aggregate.

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

12 Sec. 5. 18 V.S.A. § 4234 is amended to read:

13 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

14 (a) Possession.

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

18 (2) A person knowingly and unlawfully possessing a depressant,  
19 stimulant, or narcotic drug, other than heroin or cocaine, ~~consisting of 100~~  
20 ~~times a benchmark unlawful dosage or its equivalent as determined by the~~

1 ~~Board of Health by rule with intent to sell~~ shall be imprisoned not more than  
2 five years or fined not more than \$25,000.00, or both.

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

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

13 (b) Selling or dispensing.

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

20 (2) A person knowingly and unlawfully selling or dispensing a  
21 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,

1 consisting of 100 times a benchmark unlawful dosage or its equivalent as  
2 determined by the Board of Health by rule shall be imprisoned not more than  
3 10 years or fined not more than \$100,000.00, or both.

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

9 Sec. 6. 18 V.S.A. § 4234a is amended to read:

10 § 4234a. METHAMPHETAMINE

11 (a) Possession.

12 (1) A person knowingly and unlawfully possessing methamphetamine  
13 shall be imprisoned not more than one year or fined not more than \$2,000.00,  
14 or both.

15 (2) A person knowingly and unlawfully possessing methamphetamine ~~in~~  
16 ~~an amount consisting of 2.5 grams or more of one or more preparations,~~  
17 ~~compounds, mixtures, or substances containing methamphetamine~~ with intent  
18 to sell shall be imprisoned not more than five years or fined not more than  
19 \$100,000.00, or both.

20 (3) ~~A person knowingly and unlawfully possessing methamphetamine in~~  
21 ~~an amount consisting of 25 grams or more of one or more preparations,~~

1 ~~compounds, mixtures, or substances containing methamphetamine shall be~~  
2 ~~imprisoned not more than 10 years or fined not more than \$250,000.00, or~~  
3 ~~both.~~ [Repealed.]

4 (b) Selling and dispensing.

5 (1) A person knowingly and unlawfully dispensing methamphetamine  
6 shall be imprisoned not more than three years or fined not more than  
7 \$75,000.00, or both. A person knowingly and unlawfully selling  
8 methamphetamine shall be imprisoned not more than five years or fined not  
9 more than \$100,000.00, or both.

10 (2) A person knowingly and unlawfully selling or dispensing  
11 methamphetamine in an amount consisting of 2.5 grams or more of one or  
12 more preparations, compounds, mixtures, or substances containing  
13 methamphetamine shall be imprisoned not more than 10 years or fined not  
14 more than \$250,000.00, or both.

15 (3) A person knowingly and unlawfully selling or dispensing  
16 methamphetamine in an amount consisting of 25 grams or more of one or more  
17 preparations, compounds, mixtures, or substances containing  
18 methamphetamine shall be imprisoned not more than 20 years or fined not  
19 more than \$1,000,000.00, or both.

20 (c) Trafficking. A person knowingly and unlawfully possessing  
21 methamphetamine in an amount consisting of 300 grams or more of one or

1 more preparations, compounds, mixtures, or substances containing  
2 methamphetamine with the intent to sell or dispense the methamphetamine  
3 shall be imprisoned not more than 30 years or fined not more than  
4 \$1,000,000.00, or both. There shall be a permissive inference that a person  
5 who possesses methamphetamine in an amount consisting of 300 grams or  
6 more of one or more preparations, compounds, mixtures, or substances  
7 containing methamphetamine intends to sell or dispense the methamphetamine.  
8 The amount of possessed methamphetamine under this subsection to sustain a  
9 charge of conspiracy under 13 V.S.A. § 1404 shall be ~~no~~ not less than 800  
10 grams in the aggregate.

11 Sec. 7. 18 V.S.A. § 4235 is amended to read:

12 § 4235. HALLUCINOGENIC DRUGS

13 (a) “Dose” of a hallucinogenic drug means that minimum amount of a  
14 hallucinogenic drug, not commonly used for therapeutic purposes, which  
15 causes a substantial hallucinogenic effect. The Board of Health shall adopt  
16 rules which establish doses for hallucinogenic drugs. The Board may  
17 incorporate, where applicable, dosage calculations or schedules, whether  
18 described as “dosage equivalencies” or otherwise, established by the federal  
19 government.

1 (b) Possession.

2 (1) A person knowingly and unlawfully possessing a hallucinogenic  
3 drug, other than lysergic acid diethylamide, shall be imprisoned not more than  
4 one year or fined not more than \$2,000.00, or both.

5 (2) A person knowingly and unlawfully possessing ~~10 or more doses of~~  
6 a hallucinogenic drug, other than lysergic acid diethylamide, with intent to sell  
7 shall be imprisoned not more than five years or fined not more than  
8 \$25,000.00, or both.

9 ~~(3) A person knowingly and unlawfully possessing 100 or more doses of~~  
10 ~~a hallucinogenic drug, other than lysergic acid diethylamide, shall be~~  
11 ~~imprisoned not more than 10 years or fined not more than \$100,000.00,~~  
12 ~~or both. [Repealed.]~~

13 ~~(4) A person knowingly and unlawfully possessing 1,000 or more doses~~  
14 ~~of a hallucinogenic drug, other than lysergic acid diethylamide, shall be~~  
15 ~~imprisoned not more than 15 years or fined not more than \$500,000.00,~~  
16 ~~or both. [Repealed.]~~

17 (c) Selling or dispensing.

18 (1) A person knowingly and unlawfully dispensing a hallucinogenic  
19 drug, other than lysergic acid diethylamide, shall be imprisoned not more than  
20 three years or fined not more than \$25,000.00, or both. A person knowingly  
21 and unlawfully selling a hallucinogenic drug, other than lysergic acid



1 diethylamide, shall be imprisoned not more than five years or fined not more  
2 than \$25,000.00, or both.

3 (2) A person knowingly and unlawfully selling or dispensing 10 or more  
4 doses of a hallucinogenic drug, other than lysergic acid diethylamide, shall be  
5 imprisoned not more than 10 years or fined not more than \$100,000.00,  
6 or both.

7 (3) A person knowingly and unlawfully selling or dispensing 100 or  
8 more doses of a hallucinogenic drug, other than lysergic acid diethylamide,  
9 shall be imprisoned not more than 15 years or fined not more than  
10 \$500,000.00, or both.

11 Sec. 8. 18 V.S.A. § 4235a is amended to read:

12 § 4235a. ECSTASY

13 (a) Possession.

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

16 (2) A person knowingly and unlawfully possessing Ecstasy ~~in an~~  
17 ~~amount consisting of two grams or more of one or more preparations,~~  
18 ~~compounds, mixtures, or substances containing Ecstasy~~ with intent to sell shall  
19 be imprisoned not more than five years or fined not more than \$25,000.00,  
20 or both.

1           (3) ~~A person knowingly and unlawfully possessing Ecstasy in an~~  
2 ~~amount consisting of 20 grams or more of one or more preparations,~~  
3 ~~compounds, mixtures, or substances containing Ecstasy shall be imprisoned~~  
4 ~~not more than 10 years or fined not more than \$100,000.00, or both.~~

5 [Repealed.]

6           (4) ~~A person knowingly and unlawfully possessing Ecstasy in an~~  
7 ~~amount consisting of seven ounces or more of one or more preparations,~~  
8 ~~compounds, mixtures, or substances containing Ecstasy shall be imprisoned~~  
9 ~~not more than 20 years or fined not more than \$500,000.00, or both~~

10 [Repealed.]

11           (b) Selling or dispensing.

12           (1) A person knowingly and unlawfully dispensing Ecstasy shall be  
13 imprisoned not more than three years or fined not more than \$25,000.00, or  
14 both. A person knowingly and unlawfully selling Ecstasy shall be imprisoned  
15 not more than five years or fined not more than \$25,000.00, or both.

16           (2) A person knowingly and unlawfully selling or dispensing Ecstasy in  
17 an amount consisting of two grams or more of one or more preparations,  
18 compounds, mixtures, or substances containing Ecstasy shall be imprisoned  
19 not more than 10 years or fined not more than \$100,000.00, or both.

20           (3) A person knowingly and unlawfully selling or dispensing Ecstasy in  
21 an amount consisting of 20 grams or more of one or more preparations,

1 compounds, mixtures, or substances containing Ecstasy shall be imprisoned  
2 not more than 20 years or fined not more than \$500,000.00, or both.

3 Sec. 9. EFFECTIVE DATES

4 This act shall take effect on July 1, 2018, except that Sec. 1 shall take effect  
5 on July 2, 2018.