

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 503
3 entitled “An act relating to bail” respectfully reports that it has considered the
4 same and recommends that the Senate propose to the House that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu thereof
6 the following:

7 Sec. 1. 13 V.S.A. § 7551 is amended to read:

8 § 7551. APPEARANCE BONDS; GENERALLY

9 (a) A bond given by a person charged with a criminal offense or by a
10 witness in a criminal prosecution under section 6605 of this title, conditioned
11 for the appearance of the person or witness before the court in cases where the
12 offense is punishable by fine or imprisonment, and in appealed cases, shall be
13 taken to the ~~district or superior court~~ Criminal Division of the Superior Court
14 where the prosecution is pending, and shall remain binding upon parties until
15 discharged by the court or until sentencing. The person or witness shall appear
16 at all required court proceedings.

17 (b) No bond may be imposed at the initial appearance of a person charged
18 with a misdemeanor if the person was cited for the offense in accordance with
19 Rule 3 of the Vermont Rules of Criminal Procedure. This subsection shall not
20 be construed to restrict the court’s ability to impose conditions on an individual

1 reasonably to ensure his or her appearance at future proceedings or to
2 reasonably protect the public in accordance with section 7554 of this title.

3 Sec. 2. 13 V.S.A. § 7554 is amended to read:

4 § 7554. RELEASE PRIOR TO TRIAL

5 (a) Any person charged with an offense, other than a person held without
6 bail under section 7553 or 7553a of this title, shall at his or her appearance
7 before a judicial officer be ordered released pending trial in accordance with
8 this section.

9 * * *

10 (3) A judicial officer may order that a defendant not harass or contact or
11 cause to be harassed or contacted a victim or potential witness. This order shall
12 take effect immediately, regardless of whether the defendant is incarcerated or
13 released.

14 (4) A judicial officer may order that a defendant not possess firearms or
15 other weapons. This order shall take effect immediately, regardless of whether
16 the defendant is incarcerated or released.

17 Sec. 3. 28 V.S.A. § 301 is amended to read:

18 § 301. SUMMONS OR ARREST OF PROBATIONER

19 * * *

20 (2) Arrest or citation of person on probation. Any correctional officer
21 may arrest a probationer without a warrant if, in the judgment of the

1 correctional officer, the probationer has violated a condition or conditions of
2 his or her probation other than a condition that the probationer pay restitution;
3 or may deputize any other law enforcement officer to arrest a probationer
4 without a warrant by giving him or her a written statement setting forth that the
5 probationer has, in the judgment of the correctional officer, violated a
6 condition or conditions of his or her probation other than a condition that the
7 probationer pay restitution. The written statement delivered with the person by
8 the arresting officer to the supervising officer of the correctional facility to
9 which the person is brought for detention shall be sufficient warrant for
10 detaining him or her. In lieu of arrest, a correctional officer may issue a
11 probationer a citation to appear for arraignment. In deciding whether to arrest
12 or issue a citation, an officer shall consider whether issuance of a citation will
13 reasonably ensure the probationer's appearance at future proceedings and
14 reasonably protect the public.

15 * * *

16 (4) Detention pending hearing for probationer. Pending arraignment for
17 any charge of violation, the probationer shall ~~continue to~~ be detained at a
18 correctional facility unless issued a citation by a correctional officer.

19 Thereafter, the court may release the probationer pursuant to 13 V.S.A. § 7554.

20 There shall be no right to bail or release, unless the person is on probation for a

1 nonviolent misdemeanor or nonviolent felony ~~and the probation violation did~~
2 ~~not constitute a new crime.~~

3 (5)(A) At arraignment, if the court finds that bail or conditions of release
4 will reasonably ensure the probationer’s appearance at future proceedings and
5 conditions of release will reasonably protect the public, the court:

6 (i) shall release a probationer who is on probation for a nonviolent
7 misdemeanor or nonviolent felony pursuant to 13 V.S.A. § 7554; and

8 (ii) may release a probationer who is on probation for a violent
9 misdemeanor or violent felony pursuant to 13 V.S.A. § 7554.

10 (B) As used in this ~~subdivision~~ section:

11 ~~(A)~~(i) “Nonviolent felony” means a felony offense ~~which~~ that is
12 not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving
13 sexual exploitation of children in violation of 13 V.S.A. chapter 64.

14 ~~(B)~~(ii) “Nonviolent misdemeanor” means a misdemeanor offense
15 ~~which~~ that is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense
16 involving sexual exploitation of children in violation of 13 V.S.A. chapter 64
17 or 13 V.S.A. § 1030.

18 Sec. 4. PRETRIAL COMMUNICATIONS RECOMMENDATIONS

19 The Court Administrator, the Attorney General, the Department of State’s
20 Attorneys, the Office of the Defender General, and the Vermont Chapter of the
21 American Civil Liberties Union shall work together and with other interested

1 parties to examine options for facilitating pretrial communication between the
2 courts and defendants with a goal of reducing the risk of nonappearance by
3 defendants. The parties jointly shall provide options and costs of such options
4 to the Senate and House Committees on Judiciary on or before October 15,
5 2017.

6 Sec. 5. 18 V.S.A. § 4233a is added to read:

7 § 4233a. FENTANYL

8 (a) 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 four 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 20 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.

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

6 (b) Trafficking. A person knowingly and unlawfully possessing fentanyl in
7 an amount consisting of 70 milligrams or more of one or more preparations,
8 compounds, mixtures, or substances containing fentanyl with the intent to sell
9 or dispense the fentanyl shall be imprisoned not more than 30 years or fined
10 not more than \$1,000,000.00, or both. There shall be a permissive inference
11 that a person who possesses fentanyl in an amount of 70 milligrams or more of
12 one or more preparations, compounds, mixtures, or substances containing
13 fentanyl intends to sell or dispense the fentanyl. The amount of possessed
14 fentanyl under this subsection to sustain a charge of conspiracy under
15 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

16 (c) Transportation into the State. In addition to any other penalties
17 provided by law, a person knowingly and unlawfully transporting more than
18 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the
19 fentanyl shall be imprisoned not more than 10 years or fined not more than
20 \$100,000.00, or both.

21

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

2 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

3 (a) Possession.

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

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

12 (3) A person knowingly and unlawfully possessing a depressant,
13 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting
14 of 1,000 times a benchmark unlawful dosage or its equivalent as determined by
15 the ~~board of health~~ Board of Health by rule shall be imprisoned not more than
16 10 years or fined not more than \$100,000.00, or both.

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

1 (b) Selling or dispensing.

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

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

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

18 Sec. 7. 13 V.S.A. § 1404 is amended to read:

19 § 1404. CONSPIRACY

20 (a) A person is guilty of conspiracy if, with the purpose that an offense
21 listed in subsection (c) of this section be committed, that person agrees with

1 one or more persons to commit or cause the commission of that offense, and at
2 least two of the co-conspirators are persons who are neither law enforcement
3 officials acting in official capacity nor persons acting in cooperation with a law
4 enforcement official.

5 (b) No person shall be convicted of conspiracy unless a substantial overt
6 act in furtherance of the conspiracy is alleged and proved to have been done by
7 the defendant or by a co-conspirator, other than a law enforcement official
8 acting in an official capacity or a person acting in cooperation with a law
9 enforcement official, and subsequent to the defendant's entrance into the
10 conspiracy. Speech alone may not constitute an overt act.

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

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 8. 18 V.S.A. § 4234b is amended to read:

8 § 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

9 * * *

10 (c) Electronic registry system.

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

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

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

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

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

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

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

17 (iii) the date and time of purchase;

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

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

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

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

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

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

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

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

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

3 (A) for a first violation be assessed a civil penalty of not more than
4 \$100.00; and

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

7 (d) This section shall not apply to a manufacturer ~~which~~ that has obtained
8 an exemption from the Attorney General of the United States under Section
9 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

10 (e) As used in this section:

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

14 (2) “Knowingly” means having actual knowledge of the relevant facts.

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

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

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21

1 Sec. 9. ELECTRONIC MONITORING

2 (a) The Commissioner of Corrections shall establish an active electronic
3 monitoring program with real-time enforcement. The Electronic Monitoring
4 Program shall be administered by the Department of State's Attorneys and
5 Sheriffs and enforced by the Department of Corrections.

6 (b) The Electronic Monitoring Program described in subsection (a) of this
7 section shall result in monitoring, and not incarcerating in a correctional
8 facility:

9 (1) offenders under the custody of the Commissioner who are eligible
10 for the Home Detention Program described in 13 V.S.A. § 7554b; and

11 (2) offenders under the custody of the Commissioner including the
12 following target populations:

13 (A) offenders who are eligible for home confinement furlough, as
14 described in 28 V.S.A. § 808b;

15 (B) offenders who are past their minimum and are deemed
16 appropriate for the Program by the Commissioner of Corrections; or

17 (C) offenders who are eligible for reintegration furlough, as described
18 in 28 V.S.A. § 808c.

19 (c) An offender shall only be eligible for the Electronic Monitoring
20 Program described in subsection (a) of this section if electronic monitoring

1 equipment is fully functional in the geographic area where the offender will be
2 located.

3 Sec. 10. EFFECTIVE DATES

4 This section, Sec. 8 (ephedrine and pseudoephedrine), and Sec. 9 (electronic
5 monitoring) and shall take effect on passage. The remaining sections shall take
6 effect on July 1, 2017.

7 and that after passage the title of the bill be amended to read: “An act relating
8 to bail and conditions of release prior to trial, increased penalties for sale of
9 fentanyl, and the Electronic Monitoring Program”

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15 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE