

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 22
3 entitled “An act relating to increased penalties for possession, sale, and
4 dispensation of fentanyl” 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. 18 V.S.A. § 4233(e) is added to read:**

8 (e) Sale of heroin containing fentanyl. In addition to any other penalties
9 provided by law, a person knowingly and unlawfully selling or dispensing
10 heroin containing a detectable amount of fentanyl shall be imprisoned not more
11 than X years or fined not more than \$X, or both.

12 Sec. 2. 18 V.S.A. § 4233a is added to read:

13 § 4233a. FENTANYL

14 (a) Possession.

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

17 (2) A person knowingly and unlawfully possessing fentanyl in an
18 amount consisting of 4 milligrams or more of ~~one or more preparations,~~
19 ~~compounds, mixtures, or substances containing~~ fentanyl shall be imprisoned
20 not more than five years or fined not more than \$100,000.00, or both.

1 (3) A person knowingly and unlawfully possessing fentanyl in an
2 amount consisting of 20 milligrams gram or more of one or more preparations,
3 compounds, mixtures or substances containing fentanyl shall be imprisoned
4 not more than 10 years or fined not more than \$250,000.00, or both.

5 (4) A person knowingly and unlawfully possessing fentanyl in an
6 amount consisting of 40 milligrams or more of one or more preparations,
7 compounds, mixtures, or substances containing fentanyl shall be imprisoned
8 not more than 20 years or fined not more than \$1,000,000.00, or both.

9 (b) Selling or dispensing.

10 (1) A person knowingly and unlawfully dispensing fentanyl shall be
11 imprisoned not more than three years or fined not more than \$75,000.00, or
12 both. A person knowingly and unlawfully selling fentanyl shall be imprisoned
13 not more than five years or fined not more than \$100,000.00, or both.

14 (2) A person knowingly and unlawfully selling or dispensing fentanyl in
15 an amount consisting of 4 milligrams or more of one or more preparations,
16 compounds, mixtures, or substances containing fentanyl shall be imprisoned
17 not more than 10 years or fined not more than \$250,000.00, or both.

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

1 (c) Trafficking. A person knowingly and unlawfully possessing fentanyl in
2 an amount consisting of 70 milligrams or more of ~~one or more preparations,~~
3 ~~compounds, mixtures, or substances containing~~ fentanyl with the intent to sell
4 or dispense the fentanyl shall be imprisoned not more than 30 years or fined
5 not more than \$1,000,000.00, or both. There shall be a permissive inference
6 that a person who possesses fentanyl in an amount of 70 milligrams or more of
7 ~~one or more preparations, compounds, mixtures, or substances containing~~
8 fentanyl intends to sell or dispense the fentanyl. The amount of possessed
9 fentanyl under this subsection to sustain a charge of conspiracy under
10 13 V.S.A. § 1404 shall be no less than 70 milligrams in the aggregate.

11 (d) Transportation into the State. In addition to any other penalties
12 provided by law, a person knowingly and unlawfully transporting more than
13 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the
14 fentanyl shall be imprisoned not more than 10 years or fined not more than
15 \$100,000.00, or both.

16 Sec. 3. 18 V.S.A. § 4234 is amended to read:

17 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

18 (a) Possession.

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

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

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

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

16 (b) Selling or dispensing.

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

1 narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not
2 more than five years or fined not more than \$25,000.00, or both.

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

8 (3) A person knowingly and unlawfully selling or dispensing a
9 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,
10 consisting of 1,000 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 20 years or fined not more than \$500,000.00, or both.

13 Sec. 4. 13 V.S.A. §1404 is amended to read:

14 **§ 1404. CONSPIRACY**

15 (a) A person is guilty of conspiracy if, with the purpose that an offense
16 listed in subsection (c) of this section be committed, that person agrees with
17 one or more persons to commit or cause the commission of that offense, and at
18 least two of the co-conspirators are persons who are neither law enforcement
19 officials acting in official capacity nor persons acting in cooperation with a law
20 enforcement official.

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

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

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

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

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

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

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

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

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

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

19 (D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing

20 of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; ~~or~~

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

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

4 Sec. 5. EFFECTIVE DATE

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

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12 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE