

1 S.210

2 Introduced by Senators Rodgers and Pearson

3 Referred to Committee on

4 Date:

5 Subject: Health; regulated drugs

6 Statement of purpose of bill as introduced: This bill proposes to remove the  
7 penalties for possession of a regulated drug and replace with penalties for  
8 possession of a regulated drug with intent to sell or dispense. The bill  
9 prohibits possession of a regulated drug without a prescription or as otherwise  
10 authorized by law by a person under 21 years of age. A person who violates  
11 the underage possession provision would be referred to Court Diversion and  
12 the Youth Substance Abuse and Safety Program. The bill does not make any  
13 changes to existing penalties for unlawful sale or dispensing of regulated  
14 drugs.

15 An act relating to possession with intent to sell or dispense regulated drugs

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

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

18 § 4230. MARIJUANA

19 (a) Possession and cultivation with intent to sell or dispense.

1           (1)(A) No person shall knowingly and unlawfully possess with intent to  
2 sell more than one ounce of marijuana or more than five grams of hashish or  
3 cultivate more than two mature marijuana plants or four immature marijuana  
4 plants. For a first offense under this subdivision (A), a person shall be  
5 provided the opportunity to participate in the Court Diversion Program unless  
6 the prosecutor states on the record why a referral to the Court Diversion  
7 Program would not serve the ends of justice. A person convicted of a first  
8 offense under this subdivision shall be imprisoned not more than six months or  
9 fined not more than \$500.00, or both.

10           (B) A person convicted of a second or subsequent offense of  
11 knowingly and unlawfully possessing with intent to sell or dispense more than  
12 one ounce of marijuana or more than five grams of hashish or cultivating more  
13 than two mature marijuana plants or four immature marijuana plants shall be  
14 imprisoned not more than two years or fined not more than \$2,000.00, 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 with intent to sell or  
4 dispense two ounces of marijuana or 10 grams of hashish or knowingly and  
5 unlawfully cultivating more than four mature marijuana plants or eight  
6 immature marijuana plants shall be imprisoned not more than three years or  
7 fined not more than \$10,000.00, or both.

8 (3) A person knowingly and unlawfully possessing with intent to sell or  
9 dispense more than one pound of marijuana or more than 2.8 ounces of hashish  
10 or knowingly and unlawfully cultivating more than six mature marijuana plants  
11 or 12 immature marijuana plants shall be imprisoned not more than five years  
12 or fined not more than \$10,000.00, or both.

13 (4) A person knowingly and unlawfully possessing with intent to sell or  
14 dispense more than 10 pounds of marijuana or more than one pound of hashish  
15 or knowingly and unlawfully cultivating more than 12 mature marijuana plants  
16 or 24 immature marijuana plants shall be imprisoned not more than 15 years or  
17 fined not more than \$500,000.00, or both.

18 (5) If a court fails to provide the defendant with notice of collateral  
19 consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later  
20 at any time shows that the plea and conviction for a violation of this subsection  
21 may have or has had a negative consequence, the court, upon the defendant's

1 motion, shall vacate the judgment and permit the defendant to withdraw the  
2 plea or admission and enter a plea of not guilty. Failure of the court to advise  
3 the defendant of a particular collateral consequence shall not support a motion  
4 to vacate.

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

8 \* \* \*

9 Sec. 2. REPEAL

10 18 V.S.A. § 4230a (Marijuana possession by a person 21 years of age or  
11 older) is repealed.

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

13 § 4230b. MARIJUANA UNLAWFUL REGULATED DRUG POSSESSION

14 BY A PERSON UNDER 21 YEARS OF AGE; CIVIL VIOLATION

15 (a) Offense. No person under 21 years of age shall possess a regulated  
16 drug without a prescription or unless otherwise specifically authorized by law.

17 A person under 21 years of age who knowingly and unlawfully possesses ~~one~~  
18 ~~ounce or less of marijuana or five grams or less of hashish or two mature~~  
19 ~~marijuana plants or fewer or four immature marijuana plants or fewer a~~  
20 regulated drug commits a civil violation and shall be referred to the Court  
21 Diversion Program for the purpose of enrollment in the Youth Substance

1 Abuse Safety Program. A person who fails to complete the program  
2 successfully shall be subject to:

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

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

9 (b) Issuance of Notice of Violation. A law enforcement officer shall issue  
10 a person under 21 years of age who violates this section with a notice of  
11 violation, in a form approved by the Court Administrator. The notice of  
12 violation shall require the person to provide his or her name and address and  
13 shall explain procedures under this section, including that:

14 (1) the person shall contact the Diversion Program in the county where  
15 the offense occurred within 15 days;

16 (2) failure to contact the Diversion Program within 15 days will result in  
17 the case being referred to the Judicial Bureau, where the person, if found liable  
18 for the violation, will be subject to a civil penalty and a suspension of the  
19 person's operator's license and may face substantially increased insurance  
20 rates;

1           (3) no money should be submitted to pay any penalty until after  
2 adjudication; and

3           (4) the person shall notify the Diversion Program if the person's address  
4 changes.

5           (c) Summons and Complaint. When a person is issued a notice of violation  
6 under this section, the law enforcement officer shall complete a summons and  
7 complaint for the offense and send it to the Diversion Program in the county  
8 where the offense occurred. The summons and complaint shall not be filed  
9 with the Judicial Bureau at that time.

10          (d) Registration in Youth Substance Abuse Safety Program. Within  
11 15 days after receiving a notice of violation, the person shall contact the  
12 Diversion Program in the county where the offense occurred and register for  
13 the Youth Substance Abuse Safety Program. If the person fails to do so, the  
14 Diversion Program shall file the summons and complaint with the Judicial  
15 Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program  
16 shall provide a copy of the summons and complaint to the law enforcement  
17 officer who issued the notice of violation and shall provide two copies to the  
18 person charged with the violation.

19          (e) Notice to Report to Diversion. Upon receipt from a law enforcement  
20 officer of a summons and complaint completed under this section, the

1 Diversion Program shall send the person a notice to report to the Diversion  
2 Program. The notice to report shall provide that:

3 (1) The person is required to complete all conditions related to the  
4 offense imposed by the Diversion Program, including substance abuse  
5 screening and, if deemed appropriate following the screening, substance abuse  
6 assessment or substance abuse counseling, or both.

7 (2) If the person does not satisfactorily complete the substance abuse  
8 screening, any required substance abuse assessment or substance abuse  
9 counseling, or any other condition related to the offense imposed by the  
10 Diversion Program, the case will be referred to the Judicial Bureau, where the  
11 person, if found liable for the violation, shall be assessed a civil penalty, the  
12 person's driver's license will be suspended, and the person's automobile  
13 insurance rates may increase substantially.

14 (3) If the person satisfactorily completes the substance abuse screening,  
15 any required substance abuse assessment or substance abuse counseling, and  
16 any other condition related to the offense imposed by the Diversion Program,  
17 no penalty shall be imposed and the person's operator's license shall not be  
18 suspended.

19 (f)(1) Diversion Program Requirements. Upon being contacted by a person  
20 who has been issued a notice of violation, the Diversion Program shall register  
21 the person in the Youth Substance Abuse Safety Program. Pursuant to the

1 Youth Substance Abuse Safety Program, the Diversion Program shall impose  
2 conditions on the person. The conditions imposed shall include only  
3 conditions related to the offense and in every case shall include a condition  
4 requiring satisfactory completion of substance abuse screening using an  
5 evidence-based tool and, if deemed appropriate following the screening,  
6 substance abuse assessment and substance abuse education or substance abuse  
7 counseling, or both. If the screener recommends substance abuse counseling,  
8 the person shall choose a State-certified or State-licensed substance abuse  
9 counselor or substance abuse treatment provider to provide the services.

10 (2) Substance abuse screening required under this subsection shall be  
11 completed within 60 days after the Diversion Program receives a summons and  
12 complaint. The person shall complete all conditions at his or her own expense.

13 (3) When a person has satisfactorily completed substance abuse  
14 screening, any required substance abuse education or substance abuse  
15 counseling, and any other condition related to the offense which the Diversion  
16 Program has imposed, the Diversion Program shall:

17 (A) Void the summons and complaint with no penalty due.

18 (B) Send copies of the voided summons and complaint to the Judicial  
19 Bureau and to the law enforcement officer who completed them. Before  
20 sending copies of the voided summons and complaint to the Judicial Bureau  
21 under this subdivision, the Diversion Program shall redact all language



1 containing the person's name, address, Social Security number, and any other  
2 information which identifies the person.

3 (4) If a person does not satisfactorily complete substance abuse  
4 screening, any required substance abuse education or substance abuse  
5 counseling, or any other condition related to the offense imposed by the  
6 Diversion Program or if the person fails to pay the Diversion Program any  
7 required Program fees, the Diversion Program shall file the summons and  
8 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.  
9 The Diversion Program shall provide a copy of the summons and complaint to  
10 the law enforcement officer who issued the notice of violation and shall  
11 provide two copies to the person charged with the violation.

12 (5) A person aggrieved by a decision of the Diversion Program or  
13 alcohol counselor may seek review of that decision pursuant to Rule 75 of the  
14 Vermont Rules of Civil Procedure.

15 (g) [Repealed.]

16 (h) Record of Adjudications. Upon adjudicating a person in violation of  
17 this section, the Judicial Bureau shall notify the Commissioner of Motor  
18 Vehicles, who shall maintain a record of all such adjudications, which shall be  
19 separate from the registry maintained by the Department for motor vehicle  
20 driving records. The identity of a person in the registry shall be revealed only

1 to a law enforcement officer determining whether the person has previously  
2 violated this section.

3 Sec. 4. REPEAL

4 18 V.S.A. § 4230e (Cultivation of marijuana by a person 21 years of age or  
5 older) is repealed.

6 Sec. 5. 18 V.S.A. § 4231 is amended to read:

7 § 4231. COCAINE

8 (a) Possession with intent to sell or dispense.

9 (1) A person knowingly and unlawfully possessing with intent to sell  
10 cocaine shall be imprisoned not more than one year or fined not more than  
11 \$2,000.00, or both.

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

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

1 (4) [Deleted.]

2 \* \* \*

3 Sec. 6. 18 V.S.A. § 4232 is amended to read:

4 § 4232. LSD

5 (a) Possession with intent to sell or dispense.

6 (1) A person knowingly and unlawfully possessing with intent to sell  
7 lysergic acid diethylamide shall be imprisoned not more than one year or fined  
8 not more than \$2,000.00, or both.

9 (2) A person knowingly and unlawfully possessing with intent to sell or  
10 dispense lysergic acid diethylamide in an amount consisting of 100 milligrams  
11 or more of one or more preparations, compounds, mixtures, or substances  
12 containing lysergic acid diethylamide shall be imprisoned not more than  
13 five years or fined not more than \$25,000.00, or both.

14 (3) A person knowingly and unlawfully possessing with intent to sell or  
15 dispense lysergic acid diethylamide in an amount consisting of one gram or  
16 more of one or more preparations, compounds, mixtures, or substances  
17 containing lysergic acid diethylamide shall be imprisoned not more than  
18 10 years or fined not more than \$100,000.00, or both.

19 (4) A person knowingly and unlawfully possessing with intent to sell or  
20 dispense lysergic acid diethylamide in an amount consisting of 10 grams or  
21 more of one or more preparations, compounds, mixtures, or substances

1 containing lysergic acid diethylamide shall be imprisoned not more than  
2 20 years or fined not more than \$500,000.00, or both.

3 \* \* \*

4 Sec. 7. 18 V.S.A. § 4233 is amended to read:

5 § 4233. HEROIN

6 (a) Possession with intent to sell or dispense.

7 (1) A person knowingly and unlawfully possessing with intent to sell  
8 heroin shall be imprisoned not more than one year or fined not more than  
9 \$2,000.00, or both.

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

15 (3) A person knowingly and unlawfully possessing with intent to sell or  
16 dispense heroin in an amount consisting of one gram or more of one or more  
17 preparations, compounds, mixtures, or substances containing heroin shall be  
18 imprisoned not more than 10 years or fined not more than \$250,000.00, or  
19 both.

20 (4) A person knowingly and unlawfully possessing with intent to sell or  
21 dispense heroin in an amount consisting of two grams or more of one or more

1 preparations, compounds, mixtures, or substances containing heroin shall be  
2 imprisoned not more than 20 years or fined not more than \$1,000,000.00, or  
3 both.

4 \* \* \*

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

6 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

7 (a) Possession with intent to sell or dispense.

8 (1) A person knowingly and unlawfully possessing with intent to sell a  
9 depressant, stimulant, or narcotic drug, other than heroin or 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 with intent to sell or  
12 dispense a depressant, stimulant, or narcotic drug, other than heroin or cocaine,  
13 consisting of 100 times a benchmark unlawful dosage or its equivalent as  
14 determined by the Board of Health by rule shall be imprisoned not more than  
15 five years or fined not more than \$25,000.00, or both.

16 (3) A person knowingly and unlawfully possessing with intent to sell or  
17 dispense a depressant, stimulant, or narcotic drug, other than heroin or cocaine,  
18 consisting of 1,000 times a benchmark unlawful dosage or its equivalent as  
19 determined by the Board of Health by rule shall be imprisoned not more than  
20 10 years or fined not more than \$100,000.00, or both.



1 methamphetamine shall be imprisoned not more than 10 years or fined not  
2 more than \$250,000.00, or both.

3 \* \* \*

4 Sec. 10. 18 V.S.A. § 4235 is amended to read:

5 § 4235. HALLUCINOGENIC DRUGS

6 (a) “Dose” of a hallucinogenic drug means that minimum amount of a  
7 hallucinogenic drug, not commonly used for therapeutic purposes, which  
8 causes a substantial hallucinogenic effect. The Board of Health shall adopt  
9 rules which establish doses for hallucinogenic drugs. The Board may  
10 incorporate, where applicable, dosage calculations or schedules, whether  
11 described as “dosage equivalencies” or otherwise, established by the federal  
12 government.

13 (b) Possession with intent to sell or dispense.

14 (1) A person knowingly and unlawfully possessing with intent to sell a  
15 hallucinogenic drug, other than lysergic acid diethylamide, shall be imprisoned  
16 not more than one year or fined not more than \$2,000.00, or both.

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

1 (3) A person knowingly and unlawfully possessing with intent to sell or  
2 dispense 100 or more doses of a hallucinogenic drug, other than lysergic acid  
3 diethylamide, shall be imprisoned not more than 10 years or fined not more  
4 than \$100,000.00, or both.

5 (4) A person knowingly and unlawfully possessing with intent to sell or  
6 dispense 1,000 or more doses of a hallucinogenic drug, other than lysergic acid  
7 diethylamide, shall be imprisoned not more than 15 years or fined not more  
8 than \$500,000.00, or both.

9 \* \* \*

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

11 § 4235a. ECSTASY

12 (a) Possession with intent to sell or dispense.

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

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



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

6           (4) A person knowingly and unlawfully possessing with intent to sell or  
7           dispense Ecstasy in an amount consisting of seven ounces or more of one or  
8           more preparations, compounds, mixtures, or substances containing Ecstasy  
9           shall be imprisoned not more than 20 years or fined not more than  
10          \$500,000.00, or both.

11   \* \* \*

12          Sec. 12. 18 V.S.A. § 4237 is amended to read:

13          § 4237. SELLING OR DISPENSING TO MINORS; SELLING ON SCHOOL

14    GROUNDS

15          (a) Dispensing regulated drugs to minors.

16                  (1) No person may possess a regulated drug with intent to dispense the  
17          drug to a minor. A person who violates this subdivision shall be imprisoned  
18          not more than two years and fined not more than \$1,000.00, or both.

19                  (2) A person who knowingly and unlawfully ~~dispensing any~~ dispenses a  
20          regulated drug to a minor who is at least three years that person's junior shall

1 be ~~sentenced to a term of imprisonment of~~ imprisoned not more than five  
2 years.

3 (b) Sale of regulated drugs. A person knowingly and unlawfully selling  
4 any regulated drug to a minor shall, in addition to any other penalty, be  
5 sentenced to a term of imprisonment of not more than 10 years.

6 (c) Selling on school grounds. No person shall knowingly and unlawfully:

7 (1) dispense or sell a regulated drug to any person on a school bus or on  
8 real property owned by a public or private elementary, secondary, or  
9 vocational school;

10 (2) sell a regulated drug to any person on real property abutting real  
11 property owned by a public or private elementary, secondary, or vocational  
12 school; or

13 (3) dispense a regulated drug to any person in public view on real  
14 property abutting real property owned by a school.

15 (d) Abutting school property. The selling or dispensing of a regulated drug  
16 to a person on property abutting school property is a violation under this  
17 section only if it occurs within 500 feet of the school property. Property shall  
18 be considered abutting school property if:

19 (1) it shares a boundary with school property; or

20 (2) it is adjacent to school property and is separated only by a river,  
21 stream, or public highway.

1           (e) Penalty. A person who violates subsection (c) of this section shall, in  
2           addition to any other penalty, be sentenced to a term of imprisonment of not  
3           more than 10 years.

4           (f) Definitions. As used in this section:

5                 (1) “Minor” means a person under the age of 18.

6                 (2) “Owned by a school” means owned, leased, controlled, or  
7           subcontracted by a school and used frequently by students for educational or  
8           recreational activities.

9           Sec. 13. EFFECTIVE DATE

10           This act shall take effect on January 1, 2021.