

1 H.505

2 Introduced by Representatives Grad of Moretown, LaLonde of South

3 Burlington, and Notte of Rutland City

4 Referred to Committee on

5 Date:

6 Subject: Crimes; regulated drugs; fentanyl

7 Statement of purpose of bill as introduced: This bill proposes to reclassify the  
8 penalties for unlawfully possessing, dispensing, and selling regulated drugs; to  
9 combine the criminal penalties for dispensing or selling heroin, fentanyl, or a  
10 combination of heroin and fentanyl; and establish a statutory definition for the  
11 “knowingly” mental state required in the heroin and fentanyl statute to include  
12 actual knowledge as well as situations in which an individual subjectively  
13 believes there is a high probability that a fact exists and takes deliberate actions  
14 to avoid learning of that fact.

15 An act relating to reclassification of penalties for unlawfully possessing,  
16 dispensing, and selling a regulated drug

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

2 Sec. 1. 18 V.S.A. § 4215a is amended to read:

3 § 4215a. SALE OF SCHEDULE V DRUGS

4 (a) A duly licensed pharmacist may sell and dispense schedule V drugs  
5 only upon written prescription or oral prescription ~~which~~ that is promptly  
6 reduced to writing by a pharmacist, of a licensed physician, dentist, or  
7 veterinarian, dated and signed by the person prescribing or, if an oral  
8 prescription, by the pharmacist on the date when written.

9 \* \* \*

10 (d) ~~For a first offense, a~~ A person knowingly and unlawfully violating the  
11 provisions of this section ~~may be imprisoned for not more than six months or~~  
12 ~~fined not more than \$500.00, or both. For a second or subsequent offense, a~~  
13 ~~person knowingly and unlawfully violating the provisions of this section may~~  
14 ~~be imprisoned for not more than two years or fined not more than \$2,000.00, or~~  
15 ~~both~~ commits a Class C misdemeanor.

16 Sec. 2. 18 V.S.A. § 4223 is amended to read:

17 § 4223. FRAUD OR DECEIT

18 \* \* \*

19 (i) A person who violates this section ~~shall be imprisoned not more than~~  
20 ~~two years and one day or fined not more than \$5,000.00, or both~~ commits a  
21 Class A misdemeanor.

1 Sec. 3. 18 V.S.A. § 4229a is added to read:

2 § 4229a. FELONY POSSESSION; AFFIRMATIVE DEFENSE

3 (a) In any prosecution for felony possession under section 4230 or sections  
4 4231–4235a of this title, the defendant may raise as an affirmative defense that  
5 the amount of the unlawfully possessed drug was intended for personal use by  
6 the defendant.

7 (b) If the defendant proves by a preponderance of the evidence that the  
8 drugs unlawfully possessed were for personal use by the defendant, the  
9 defendant shall be subject to a Class B misdemeanor.

10 Sec. 4. 18 V.S.A. § 4228 is amended to read:

11 § 4228. UNLAWFUL MANUFACTURE, DISTRIBUTION, DISPENSING,  
12 OR SALE OF A NONCONTROLLED DRUG OR SUBSTANCE

13 (a) It is unlawful for any person to knowingly dispense, manufacture,  
14 process, package, distribute, or sell or attempt to dispense, manufacture,  
15 process, package, distribute, or sell a noncontrolled drug or substance upon  
16 either:

17 (1) the express or implied representation that the drug or substance is a  
18 controlled drug; or

19 (2) the express or implied representation that the drug or substance is of  
20 such nature or appearance that the dispensee or purchaser will be able to  
21 dispense or sell the drug or substance as a controlled drug.

1 (b) For the purposes of this section, a “controlled” drug or substance shall  
2 mean those drugs or substances listed under schedules I through V in the  
3 federal Controlled Substances Act, 21 U.S.C. § 801 et seq. as amended.

4 \* \* \*

5 (f) A person convicted of violating this section ~~shall be subject to~~  
6 ~~imprisonment for a term of up to one year or a fine of up to \$5,000.00, or both~~  
7 commits a Class B misdemeanor. If the violation of this section involves  
8 dispensing, distributing, or selling to a person under ~~the age of 21~~ years of age,  
9 the person ~~shall be subject to a term of imprisonment of not more than two~~  
10 ~~years or fined up to \$10,000.00, or both~~ commits a Class A misdemeanor.

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

12 § 4230. CANNABIS

13 (a) Possession and cultivation.

14 (1) No person shall knowingly and unlawfully possess more than one  
15 ounce of cannabis or more than five grams of hashish or cultivate more than  
16 two mature cannabis plants or four immature cannabis plants. A person who  
17 violates this subdivision shall be assessed a civil penalty as follows:

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

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

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

1           (2)(A) No person shall knowingly and unlawfully possess ~~two ounces~~  
2           60 grams or more of cannabis or ten grams or more of hashish or more than  
3           three mature cannabis plants or six immature cannabis plants. For a first  
4           offense under this subdivision (2), a person shall be provided the opportunity  
5           to participate in the Court Diversion Program unless the prosecutor states on  
6           the record why a referral to the Court Diversion Program would not serve the  
7           ends of justice. A person convicted of a first offense under this subdivision  
8           ~~shall be imprisoned not more than six months or fined not more than \$500.00,~~  
9           ~~or both~~ (2) commits a Class B misdemeanor.

10           (B) A person convicted of a second or subsequent offense of  
11           violating subdivision (A) of this subdivision (2) ~~shall be imprisoned not more~~  
12           ~~than two years or fined not more than \$2,000.00, or both~~ commits a Class A  
13           misdemeanor.

14           (C) Upon an adjudication of guilt for a first or second offense under  
15           this subdivision (2), the court may defer sentencing as provided in 13 V.S.A.  
16           § 7041, except that the court may in its discretion defer sentence without the  
17           filing of a presentence investigation report and except that sentence may be  
18           imposed at any time within two years from and after the date of entry of  
19           deferment. The court may, prior to sentencing, order that the defendant submit  
20           to a drug assessment screening, which may be considered at sentencing in the  
21           same manner as a presentence report.

1           (3) A person knowingly and unlawfully possessing eight ounces of  
2           cannabis or 1.4 ounces of hashish or knowingly and unlawfully cultivating  
3           more than four mature cannabis plants or eight immature cannabis plants ~~shall~~  
4           ~~be imprisoned not more than three years or fined not more than \$10,000.00, or~~  
5           ~~both~~ commits a Class A misdemeanor.

6           (4) A person knowingly and unlawfully possessing more than one pound  
7           of cannabis or more than 2.8 ounces of hashish or knowingly and unlawfully  
8           cultivating more than six mature cannabis plants or 12 immature cannabis  
9           plants ~~shall be imprisoned not more than five years or fined not more than~~  
10          ~~\$10,000.00, or both~~ commits a Class E felony.

11          (5) A person knowingly and unlawfully possessing more than 10 pounds  
12          of cannabis or more than one pound of hashish or knowingly and unlawfully  
13          cultivating more than 12 mature cannabis plants or 24 immature cannabis  
14          plants ~~shall be imprisoned not more than 15 years or fined not more than~~  
15          ~~\$500,000.00, or both~~ commits a Class D felony.

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

1 the defendant of a particular collateral consequence shall not support a motion  
2 to vacate.

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

6 (b) Selling or dispensing.

7 (1) A person knowingly and unlawfully selling cannabis or hashish ~~shall~~  
8 ~~be imprisoned not more than two years or fined not more than \$10,000.00, or~~  
9 ~~both~~ commits a Class B misdemeanor.

10 (2) A person knowingly and unlawfully selling or dispensing more than  
11 one ounce of cannabis or five grams or more of hashish ~~shall be imprisoned~~  
12 ~~not more than five years or fined not more than \$100,000.00, or both~~ commits  
13 a Class A misdemeanor.

14 (3) A person knowingly and unlawfully selling or dispensing one pound  
15 or more of cannabis or 2.8 ounces or more of hashish ~~shall be imprisoned not~~  
16 ~~more than 15 years or fined not more than \$500,000.00, or both~~ commits a  
17 Class D felony.

18 (4) A person 21 years of age or older may dispense one ounce or less of  
19 cannabis or five grams or less of hashish to another person who is 21 years of  
20 age or older, provided that the dispensing is not advertised or promoted to the  
21 public.

1 (c) Trafficking. A person knowingly and unlawfully possessing 50 pounds  
2 or more of cannabis or five pounds or more of hashish with the intent to sell or  
3 dispense the cannabis or hashish ~~shall be imprisoned not more than 30 years or~~  
4 ~~fined not more than \$1,000,000.00, or both~~ commits a Class C felony. There  
5 shall be a permissive inference that a person who possesses 50 pounds or more  
6 of cannabis or five pounds or more of hashish intends to sell or dispense the  
7 cannabis or hashish.

8 \* \* \*

9 Sec. 6. 18 V.S.A. § 4230f is amended to read:

10 § 4230f. DISPENSING CANNABIS TO A PERSON UNDER 21 YEARS  
11 OF AGE; CRIMINAL OFFENSE

12 (a) No person shall:

13 (1) dispense cannabis to a person under 21 years of age; or

14 (2) knowingly enable the consumption of cannabis by a person under  
15 21 years of age.

16 (b) As used in this section, “enable the consumption of cannabis” means  
17 creating a direct and immediate opportunity for a person to consume cannabis.

18 (c) Except as provided in subsection (d) of this section, a person who  
19 violates subsection (a) of this section ~~shall be imprisoned not more than two~~  
20 ~~years or fined not more than \$2,000.00, or both~~ commits a Class A  
21 misdemeanor.



1 (d) A person who violates subsection (a) of this section, where the person  
2 under 21 years of age while operating a motor vehicle on a public highway  
3 causes death or serious bodily injury to ~~himself or herself~~ themselves or to  
4 another person as a result of the violation, ~~shall be imprisoned not more than~~  
5 ~~five years or fined not more than \$10,000.00, or both~~ commits a Class D  
6 felony.

7 (e)(1) Subsections (a)–(d) of this section shall not apply to a person under  
8 21 years of age who dispenses cannabis to a person under 21 years of age or  
9 who knowingly enables the consumption of cannabis by a person under  
10 21 years of age.

11 (2) A person who is 18, 19, or 20 years of age who knowingly dispenses  
12 cannabis to a person who is 18, 19, or 20 years of age commits a civil violation  
13 and shall be referred to the Court Diversion Program for the purpose of  
14 enrollment in the Youth Substance Awareness Safety Program in accordance  
15 with the provisions of section 4230b of this title and shall be subject to the  
16 penalties in that section for failure to complete the program successfully.

17 (3) A person 18, 19, or 20 years of age who knowingly dispenses to a  
18 person under 18 years of age who is at least three years that person's junior  
19 ~~shall be sentenced to a term of imprisonment of not more than five years in~~  
20 ~~accordance with section 4237 of this title~~ commits a Class B misdemeanor.

1 (4) A person who is 19 years of age who knowingly dispenses to a  
2 person 17 years of age or a person who is 18 years of age who knowingly  
3 dispenses cannabis to a person who is 16 or 17 years of age commits a  
4 ~~misdemeanor crime and shall be fined not more than \$500.00~~ Class E  
5 misdemeanor.

6 (5) A person who is under 18 years of age who knowingly dispenses  
7 cannabis to another person who is under 18 years of age commits a delinquent  
8 act and shall be subject to 33 V.S.A. chapter 52.

9 \* \* \*

10 Sec. 7. 18 V.S.A. § 4230h is amended to read:

11 § 4230h. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE

12 PROHIBITED

13 (a) No person shall manufacture concentrated cannabis by chemical  
14 extraction or chemical synthesis using butane or hexane ~~unless authorized as a~~  
15 ~~dispensary pursuant to a registration issued by the Department of Public Safety~~  
16 ~~pursuant to chapter 86 of this title.~~

17 (b) A person who violates subsection (a) of this section ~~shall be imprisoned~~  
18 ~~not more than two years or fined not more than \$2,000.00, or both~~ commits a  
19 Class A misdemeanor. A person who violates subsection (a) of this section  
20 and causes serious bodily injury to another person ~~shall be imprisoned not~~

1 ~~more than five years or fined not more than \$5,000.00, or both~~ commits a Class  
2 E felony.

3 Sec. 8. 18 V.S.A. § 4231 is amended to read:

4 § 4231. COCAINE

5 (a) Possession.

6 (1) A person knowingly and unlawfully possessing cocaine ~~shall be~~  
7 ~~imprisoned not more than one year or fined not more than \$2,000.00, or both~~  
8 commits a Class B misdemeanor.

9 (2) A person knowingly and unlawfully possessing cocaine in an  
10 amount consisting of ~~2.5~~ 5 grams or more of one or more preparations,  
11 compounds, mixtures, or substances containing cocaine ~~shall be imprisoned~~  
12 ~~not more than five years or fined not more than \$100,000.00, or both~~ commits  
13 a Class E felony.

14 (3) A person knowingly and unlawfully possessing cocaine in an  
15 amount consisting of ~~one ounce~~ 30 grams or more of one or more preparations,  
16 compounds, mixtures, or substances containing cocaine ~~shall be imprisoned~~  
17 ~~not more than 10 years or fined not more than \$250,000.00, or both~~ commits a  
18 Class D felony.

19 (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~~ commits a Class E felony. A person knowingly and unlawfully selling  
5 cocaine ~~shall be imprisoned not more than five years or fined not more than~~  
6 ~~\$100,000.00, or both~~ commits a Class D felony.

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

11 [Repealed.]

12 (3) A person knowingly and unlawfully selling or dispensing cocaine in  
13 an amount consisting of ~~one ounce~~ 30 grams or more of one or more  
14 preparations, compounds, mixtures, or substances containing cocaine ~~shall be~~  
15 ~~imprisoned not more than 20 years or fined not more than \$1,000,000.00, or~~  
16 ~~both~~ commits a Class C felony.

17 (c) Trafficking.

18 (1) ~~Trafficking~~. A person knowingly and unlawfully possessing cocaine  
19 in an amount consisting of ~~150~~ 100 grams or more of one or more preparations,  
20 compounds, mixtures, or substances containing cocaine with the intent to sell  
21 or dispense the cocaine ~~shall be imprisoned not more than 30 years or fined not~~

1 ~~more than \$1,000,000.00, or both~~ commits a Class B felony. There shall be a  
2 permissive inference that a person who possesses cocaine in an amount  
3 consisting of ~~450~~ 100 grams or more of one or more preparations, compounds,  
4 mixtures, or substances containing cocaine intends to sell or dispense the  
5 cocaine. The amount of possessed cocaine under this subdivision to sustain a  
6 charge of conspiracy under 13 V.S.A. § 1404 shall be ~~no~~ not less than  
7 400 grams in the aggregate.

8 (2) ~~A person knowingly and unlawfully possessing crack cocaine in an~~  
9 ~~amount consisting of 60 grams or more of one or more preparations,~~  
10 ~~compounds, mixtures, or substances containing crack cocaine with the intent to~~  
11 ~~sell or dispense the crack cocaine shall be imprisoned not more than 30 years~~  
12 ~~or fined not more than \$1,000,000.00, or both. There shall be a permissive~~  
13 ~~inference that a person who possesses crack cocaine in an amount consisting of~~  
14 ~~60 grams or more of one or more preparations, compounds, mixtures, or~~  
15 ~~substances containing crack cocaine intends to sell or dispense the crack~~  
16 ~~cocaine. [Repealed.]~~

17 Sec. 9. 18 V.S.A. § 4232 is amended to read:

18 § 4232. LSD

19 (a) Possession.

1           (1) A person knowingly and unlawfully possessing lysergic acid  
2           diethylamide ~~shall be imprisoned not more than one year or fined not more~~  
3           ~~than \$2,000.00, or both~~ commits a Class B misdemeanor.

4           (2) A person knowingly and unlawfully possessing lysergic acid  
5           diethylamide in an amount consisting of 100 milligrams or more of one or  
6           more preparations, compounds, mixtures, or substances containing lysergic  
7           acid diethylamide ~~shall be imprisoned not more than five years or fined not~~  
8           ~~more than \$25,000.00, or both~~ commits a Class E felony.

9           (3) A person knowingly and unlawfully possessing lysergic acid  
10          diethylamide in an amount consisting of one gram or more of one or more  
11          preparations, compounds, mixtures, or substances containing lysergic acid  
12          diethylamide ~~shall be imprisoned not more than 10 years or fined not more~~  
13          ~~than \$100,000.00, or both~~ commits a Class D felony.

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

19          (b) Selling or dispensing.

20                 (1) A person knowingly and unlawfully dispensing lysergic acid  
21                 diethylamide ~~shall be imprisoned not more than three years or fined not more~~

1 ~~than \$25,000.00, or both~~ commits a Class E felony. A person knowingly and  
2 unlawfully selling lysergic acid diethylamide ~~shall be imprisoned not more~~  
3 ~~than five years or fined not more than \$25,000.00, or both~~ commits a Class D  
4 felony.

5 (2) A person knowingly and unlawfully selling or dispensing lysergic  
6 acid diethylamide in an amount consisting of 100 milligrams or more of one or  
7 more preparations, compounds, mixtures, or substances containing lysergic  
8 acid diethylamide ~~shall be imprisoned not more than 10 years or fined not~~  
9 ~~more than \$100,000.00, or both~~ commits a Class C felony.

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

15 Sec. 10. 18 V.S.A. § 4233 is amended to read:

16 § 4233. HEROIN; FENTANYL

17 (a) Possession.

18 (1) A person knowingly and unlawfully possessing heroin, fentanyl, or  
19 any combination of heroin and fentanyl ~~shall be imprisoned not more than one~~  
20 ~~year or fined not more than \$2,000.00, or both~~ commits a Class B  
21 misdemeanor.

1           (2) A person knowingly and unlawfully possessing heroin, fentanyl, or  
2           any combination of heroin and fentanyl in an amount consisting of ~~200~~ 500  
3           milligrams or more of one or more preparations, compounds, mixtures, or  
4           substances containing heroin ~~shall be imprisoned not more than five years or~~  
5           ~~fined not more than \$100,000.00, or both~~ commits a Class B misdemeanor.

6           (3) A person knowingly and unlawfully possessing ~~heroin in an amount~~  
7           ~~consisting of~~ one gram or more of one or more preparations, compounds,  
8           mixtures, or substances containing heroin, fentanyl, or any combination of  
9           heroin and fentanyl ~~shall be imprisoned not more than 10 years or fined not~~  
10          ~~more than \$250,000.00, or both~~ commits a Class D felony.

11          (4) A person knowingly and unlawfully possessing ~~heroin in an amount~~  
12          ~~consisting of two~~ 2.5 grams or more of one or more preparations, compounds,  
13          mixtures, or substances containing heroin, fentanyl, or any combination of  
14          heroin and fentanyl ~~shall be imprisoned not more than 20 years or fined not~~  
15          ~~more than \$1,000,000.00, or both~~ commits a Class C felony.

16          (b) Selling or dispensing.

17          (1) A person knowingly and unlawfully dispensing heroin, fentanyl, or  
18          any combination of heroin and fentanyl ~~shall be imprisoned not more than~~  
19          ~~three years or fined not more than \$75,000.00, or both~~ commits a Class E  
20          felony. A person knowingly and unlawfully selling heroin, fentanyl, or any



1 ~~combination of heroin and fentanyl shall be imprisoned not more than five~~  
2 ~~years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

3 (2) ~~A person knowingly and unlawfully selling or dispensing heroin in~~  
4 ~~an amount consisting of 200 milligrams or more of one or more preparations,~~  
5 ~~compounds, mixtures, or substances containing heroin shall be imprisoned not~~  
6 ~~more than 10 years or fined not more than \$250,000.00, or both. [Repealed.]~~

7 (3) A person knowingly and unlawfully selling or dispensing ~~heroin in~~  
8 ~~an amount consisting of one gram or more of one or more preparations,~~  
9 ~~compounds, mixtures, or substances containing heroin,~~ fentanyl, or any  
10 combination of heroin and fentanyl shall be imprisoned not more than 20 years  
11 or fined not more than \$1,000,000.00, or both commits a Class C felony.

12 (c) Trafficking. A person knowingly and unlawfully possessing ~~heroin in~~  
13 ~~an amount consisting of 3.5~~ 5 grams or more of one or more preparations,  
14 ~~compounds, mixtures, or substances containing heroin,~~ fentanyl, or any  
15 combination of heroin and fentanyl with the intent to sell or dispense the  
16 ~~heroin shall be imprisoned not more than 30 years or fined not more than~~  
17 ~~\$1,000,000.00, or both~~ commits a Class B felony. There shall be a permissive  
18 inference that a person who possesses ~~heroin in an amount of 3.5~~ 5 grams or  
19 more of one or more preparations, compounds, mixtures, or substances  
20 containing heroin, fentanyl, or any combination of heroin and fentanyl intends  
21 to sell or dispense the heroin, fentanyl, or any combination of heroin and

1 fentanyl. The amount of possessed heroin, fentanyl, or any combination of  
2 heroin and fentanyl under this subsection to sustain a charge of conspiracy  
3 under 13 V.S.A. § 1404 shall be ~~no~~ not less than 10 grams in the aggregate.

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

9 (e) As used in this section, “knowingly” includes actual knowledge as well  
10 as situations in which an individual subjectively believes there is a high  
11 probability that a fact exists and takes deliberate actions to avoid learning of  
12 that fact. An individual acts knowingly when the individual acts voluntarily  
13 and consciously and not inadvertently, because of a mistake, or by accident.

14 Sec. 11. REPEAL

15 18 V.S.A. § 4233a (fentanyl) is repealed.

16 Sec. 12. 13 V.S.A. § 1404 is amended to read:

17 § 1404. CONSPIRACY

18 (a) A person is guilty of conspiracy if, with the purpose that an offense  
19 listed in subsection (c) of this section be committed, that person agrees with  
20 one or more persons to commit or cause the commission of that offense, and at  
21 least two of the co-conspirators are persons who are neither law enforcement

1 officials acting in official capacity nor persons acting in cooperation with a law  
2 enforcement official.

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

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

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

12 (2) arson under sections 501–504 and 506 of this title;

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

15 (4) receiving stolen property under sections 2561–2564 of this title; or

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

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

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

20 (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin, fentanyl, or  
21 any combination of heroin and fentanyl;

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

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

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

7 Sec. 13. 18 V.S.A. § 4234 is amended to read:

8 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

9       (a) Possession.

10           (1)(A) Except as provided by subdivision (B) of this subdivision (1), a  
11 person knowingly and unlawfully possessing a depressant, stimulant, or  
12 narcotic drug, ~~other than heroin or cocaine, shall be imprisoned not more than~~  
13 ~~one year or fined not more than \$2,000.00, or both~~ commits a Class B  
14 misdemeanor.

15           (B) A person knowingly and unlawfully possessing 224 milligrams  
16 or less of buprenorphine shall not be punished in accordance with subdivision  
17 (A) of this subdivision (1).

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 ~~shall be imprisoned not more than five years or fined~~  
2 ~~not more than \$25,000.00, or both~~ commits a Class E felony.

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~~ commits a Class D felony.

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~~ commits a Class E felony. A person knowingly and unlawfully selling a  
18 depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin,  
19 ~~shall be imprisoned not more than five years or fined not more than~~  
20 ~~\$25,000.00, or both~~ commits a Class D felony.

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

6           (3) ~~A person knowingly and unlawfully selling or dispensing a~~  
7           ~~depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,~~  
8           ~~consisting of 1,000 times a benchmark unlawful dosage or its equivalent as~~  
9           ~~determined by the Board of Health by rule shall be imprisoned not more than~~  
10          ~~20 years or fined not more than \$500,000.00, or both. [Repealed.]~~

11          (c) Possession of buprenorphine by a person under 21 years of age.

12           (1) Except as provided in subdivision (2) of this subsection, a person  
13           under 21 years of age who knowingly and unlawfully possesses 224  
14           milligrams or less of buprenorphine commits a civil violation and shall be  
15           subject to the provisions of section 4230b of this title.

16           (2) A person under 16 years of age who knowingly and unlawfully  
17           possesses 224 milligrams or less of buprenorphine commits a delinquent act  
18           and shall be subject to the provisions of section 4230j of this title.

19          (d) Exceptions. This section shall not apply to heroin, fentanyl, or cocaine.

1 Sec. 14. 2021 Acts and Resolves No. 46, Sec. 3 is amended to read:

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

3 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

4 (a) Possession.

5 ~~(1)(A) Except as provided by subdivision (B) of this subdivision (1), a~~ A  
6 person knowingly and unlawfully possessing a depressant, stimulant, or  
7 narcotic drug commits a Class B misdemeanor.

8 ~~(B) A person knowingly and unlawfully possessing 224 milligrams~~  
9 ~~or less of buprenorphine shall not be punished in accordance with subdivision~~  
10 ~~(A) of this subdivision (1).~~

11 \* \* \*

12 ~~(c) Possession of buprenorphine by a person under 21 years of age.~~

13 ~~(1) Except as provided in subdivision (2) of this subsection, a person~~  
14 ~~under 21 years of age who knowingly and unlawfully possesses 224~~  
15 ~~milligrams or less of buprenorphine commits a civil violation and shall be~~  
16 ~~subject to the provisions of section 4230b of this title.~~

17 ~~(2) A person under 16 years of age who knowingly and unlawfully~~  
18 ~~possesses 224 milligrams or less of buprenorphine commits a delinquent act~~  
19 ~~and shall be subject to the provisions of section 4230j of this title. [Repealed.]~~

20 \* \* \*

1 Sec. 15. 18 V.S.A. § 4234a is amended to read:

2 § 4234a. METHAMPHETAMINE

3 (a) Possession.

4 (1) A person knowingly and unlawfully possessing methamphetamine  
5 ~~shall be imprisoned not more than one year or fined not more than \$2,000.00,~~  
6 ~~or both~~ commits a Class B misdemeanor.

7 (2) A person knowingly and unlawfully possessing methamphetamine in  
8 an amount consisting of 2.5 grams or more of one or more preparations,  
9 compounds, mixtures, or substances containing methamphetamine ~~shall be~~  
10 ~~imprisoned not more than five years or fined not more than \$100,000.00, or~~  
11 ~~both~~ commits a Class D felony.

12 (3) A person knowingly and unlawfully possessing methamphetamine in  
13 an amount consisting of 25 grams or more of one or more preparations,  
14 compounds, mixtures, or substances containing methamphetamine ~~shall be~~  
15 ~~imprisoned not more than 10 years or fined not more than \$250,000.00, or both~~  
16 ~~commits a Class C felony.~~

17 (b) Selling and dispensing.

18 (1) A person knowingly and unlawfully dispensing methamphetamine  
19 ~~shall be imprisoned not more than three years or fined not more than~~  
20 ~~\$75,000.00, or both~~ commits a Class E felony. A person knowingly and



1 unlawfully selling methamphetamine ~~shall be imprisoned not more than five~~  
2 ~~years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

3 (2) ~~A person knowingly and unlawfully selling or dispensing~~  
4 ~~methamphetamine in an amount consisting of 2.5 grams or more of one or~~  
5 ~~more preparations, compounds, mixtures, or substances containing~~  
6 ~~methamphetamine shall be imprisoned not more than 10 years or fined not~~  
7 ~~more than \$250,000.00, or both.~~ [Repealed.]

8 (3) A person knowingly and unlawfully selling or dispensing  
9 methamphetamine in an amount consisting of 25 grams or more of one or more  
10 preparations, compounds, mixtures, or substances containing  
11 methamphetamine ~~shall be imprisoned not more than 20 years or fined not~~  
12 ~~more than \$1,000,000.00, or both~~ commits a Class C felony.

13 (c) Trafficking. A person knowingly and unlawfully possessing  
14 methamphetamine in an amount consisting of 300 grams or more of one or  
15 more preparations, compounds, mixtures, or substances containing  
16 methamphetamine with the intent to sell or dispense the methamphetamine  
17 ~~shall be imprisoned not more than 30 years or fined not more than~~  
18 ~~\$1,000,000.00, or both~~ commits a Class B felony. There shall be a permissive  
19 inference that a person who possesses methamphetamine in an amount  
20 consisting of 300 grams or more of one or more preparations, compounds,  
21 mixtures, or substances containing methamphetamine intends to sell or

1 dispense the methamphetamine. The amount of possessed methamphetamine  
2 under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404  
3 shall be ~~no~~ not less than 800 grams in the aggregate

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

5 § 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

6 (a) Possession.

7 (1) No person shall knowingly and unlawfully possess a drug product  
8 containing ephedrine base, pseudoephedrine base, or phenylpropanolamine  
9 base with the intent to use the product as a precursor to manufacture  
10 methamphetamine or another controlled substance.

11 (2) A person who violates this subsection ~~shall~~:

12 (A) commits a Class B misdemeanor if the offense involves  
13 possession of less than nine grams of ephedrine base, pseudoephedrine base, or  
14 phenylpropanolamine base, ~~be imprisoned not more than one year or fined not~~  
15 ~~more than \$2,000.00, or both;~~

16 (B) commits a Class E felony if the offense involves possession of  
17 nine or more grams of ephedrine base, pseudoephedrine base, or  
18 phenylpropanolamine base, ~~be imprisoned not more than five years or fined~~  
19 ~~not more than \$100,000.00, or both.~~

20 \* \* \*

1 Sec. 17. 18 V.S.A. § 4235 is amended to read:

2 § 4235. HALLUCINOGENIC DRUGS

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

10 (b) Possession.

11 (1) A person knowingly and unlawfully possessing a hallucinogenic  
12 drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than~~  
13 ~~one year or fined not more than \$2,000.00, or both~~ commits a Class B  
14 misdemeanor.

15 (2) A person knowingly and unlawfully possessing 10 or more doses of  
16 a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be~~  
17 ~~imprisoned not more than five years or fined not more than \$25,000.00, or both~~  
18 commits a Class A misdemeanor.

19 (3) A person knowingly and unlawfully possessing 100 or more doses of  
20 a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be~~

1 ~~imprisoned not more than 10 years or fined not more than \$100,000.00, or both~~  
2 commits a Class D felony.

3 (4) A person knowingly and unlawfully possessing 1,000 or more doses  
4 of a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be~~  
5 ~~imprisoned not more than 15 years or fined not more than \$500,000.00, or both~~  
6 commits a Class C felony.

7 (c) Selling or dispensing.

8 (1) A person knowingly and unlawfully dispensing a hallucinogenic  
9 drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than~~  
10 ~~three years or fined not more than \$25,000.00, or both~~ commits a Class E  
11 felony. A person knowingly and unlawfully selling a hallucinogenic drug,  
12 other than lysergic acid diethylamide, ~~shall be imprisoned not more than five~~  
13 ~~years or fined not more than \$25,000.00, or both~~ commits a Class D felony.

14 (2) ~~A person knowingly and unlawfully selling or dispensing 10 or more~~  
15 ~~doses of a hallucinogenic drug, other than lysergic acid diethylamide, shall be~~  
16 ~~imprisoned not more than 10 years or fined not more than \$100,000.00, or~~  
17 ~~both.~~ [Repealed.]

18 (3) A person knowingly and unlawfully selling or dispensing 100 or  
19 more doses of a hallucinogenic drug, other than lysergic acid diethylamide,  
20 ~~shall be imprisoned not more than 15 years or fined not more than~~  
21 ~~\$500,000.00, or both~~ commits a Class C felony.

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

2 § 4235a. ECSTASY

3 (a) Possession.

4 (1) A person knowingly and unlawfully possessing Ecstasy ~~shall be~~  
5 ~~imprisoned not more than one year or fined not more than \$2,000.00, or both~~  
6 commits a Class B misdemeanor.

7 (2) A person knowingly and unlawfully possessing Ecstasy in an  
8 amount consisting of two grams or more of one or more preparations,  
9 compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned~~  
10 ~~not more than five years or fined not more than \$25,000.00, or both~~ commits a  
11 Class E felony.

12 (3) A person knowingly and unlawfully possessing Ecstasy in an  
13 amount consisting of 20 grams or more of one or more preparations,  
14 compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned~~  
15 ~~not more than 10 years or fined not more than \$100,000.00, or both~~ commits a  
16 Class D felony.

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

21 [Repealed.]

1 (b) Selling or dispensing.

2 (1) A person knowingly and unlawfully dispensing Ecstasy ~~shall be~~  
3 ~~imprisoned not more than three years or fined not more than \$25,000.00, or~~  
4 ~~both~~ commits a Class E felony. A person knowingly and unlawfully selling  
5 Ecstasy ~~shall be imprisoned not more than five years or fined not more than~~  
6 ~~\$25,000.00, or both~~ commits a Class D felony.

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

11 [Repealed.]

12 (3) A person knowingly and unlawfully selling or dispensing Ecstasy in  
13 an amount consisting of 20 grams or more of one or more preparations,  
14 compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned~~  
15 ~~not more than 20 years or fined not more than \$500,000.00, or both~~ commits a  
16 Class C felony.

17 Sec. 19. 18 V.S.A. § 4236 is amended to read:

18 § 4236. MANUFACTURE OR CULTIVATION

19 (a) A person knowingly and unlawfully manufacturing or cultivating a  
20 regulated drug ~~shall be imprisoned not more than 20 years or fined not more~~  
21 ~~than \$1,000,000.00, or both~~ commits a Class B felony.

1 (b) This section shall not apply to the cultivation of cannabis.

2 Sec. 20. 18 V.S.A. § 4237 is amended to read:

3 § 4237. SELLING OR DISPENSING TO MINORS; SELLING ON SCHOOL  
4 GROUNDS

5 (a) Dispensing regulated drugs to minors. A person knowingly and  
6 unlawfully dispensing any regulated drug to a minor who is at least three years  
7 that person's junior ~~shall be sentenced to a term of imprisonment of not more~~  
8 ~~than five years~~ commits a Class E felony.

9 (b) Sale of regulated drugs. A person knowingly and unlawfully selling  
10 any regulated drug to a minor shall, in addition to any other penalty, be  
11 sentenced to a term of imprisonment of not more than ~~40~~ 5 years.

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

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

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

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

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

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

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

8 (e) Penalty. A person who violates subsection (c) of this section shall, in  
9 addition to any other penalty, be sentenced to a term of imprisonment of not  
10 more than ~~10~~ 5 years.

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

12 (1) "Minor" means a person under ~~the age of~~ 18 years of age.

13 (2) "Owned by a school" means owned, leased, controlled, or  
14 subcontracted by a school and used frequently by students for educational or  
15 recreational activities.

16 Sec. 21. 18 V.S.A. § 4249 is amended to read:

17 § 4249. TRANSPORTATION OF ALCOHOL, TOBACCO, OR

18 REGULATED DRUGS INTO PLACES OF DETENTION

19 (a) No person shall knowingly carry or introduce or cause to be carried or  
20 introduced into a lockup, jail, prison, or correctional facility:

21 (1) alcohol or alcoholic beverages;





1 Sec. 22. 18 V.S.A. § 4250 is amended to read:

2 § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH  
3 DEATH RESULTING

4 (a) If the death of a person results from the selling or dispensing of a  
5 regulated drug to the person in violation of this chapter, the person convicted  
6 of the violation ~~shall be imprisoned not less than two years nor more than 20~~  
7 ~~years~~ commits a Class B felony.

8 (b) This section shall apply only if the person's use of the regulated drug is  
9 the proximate cause of ~~his or her~~ the person's death.

10 Sec. 23. 18 V.S.A. § 4252 is amended to read:

11 § 4252. PENALTIES FOR DISPENSING OR SELLING REGULATED  
12 DRUGS IN A DWELLING

13 (a) No person shall knowingly permit a dwelling, building, or structure  
14 owned by or under the control of the person to be used for the purpose of  
15 illegally dispensing or selling a regulated drug.

16 (b) A landlord shall be in violation of subsection (a) of this section only if  
17 the landlord knew at the time ~~he or she~~ the landlord signed the lease agreement  
18 that the tenant intended to use the dwelling, building, or structure for the  
19 purpose of illegally dispensing or selling a regulated drug.

1           (c) A person who violates this section ~~shall be imprisoned not more than~~  
2 ~~two years or fined not more than \$1,000.00 or both~~ commits a Class A  
3 misdemeanor.

4           Sec. 24. 18 V.S.A. § 4476 is amended to read:

5           § 4476. OFFENSES AND PENALTIES

6           (a) A person who sells drug paraphernalia to a person under 18 years of age  
7 ~~shall be imprisoned for not more than two years or fined not more than~~  
8 ~~\$2,000.00, or both~~ commits a Class C misdemeanor.

9           (b) The distribution and possession of needles and syringes as part of an  
10 organized community-based needle exchange program shall not be a violation  
11 of this section or of chapter 84 of this title.

12           Sec. 25. EFFECTIVE DATES

13           (a) Except for Sec. 14, this act shall take effect on passage.

14           (b) Sec. 14 (amending 2021 Acts and Resolves No. 46, Sec. 3) shall take  
15 effect on July 1, 2023.