

1 S.187

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Crimes; regulated drugs; fentanyl

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

13 An act relating to the mental state required for prosecution of criminal drug  
14 offenses and penalties for dispensing or selling fentanyl

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

16 Sec. 1. 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

1 least two of the co-conspirators are persons who are neither law enforcement  
2 officials acting in official capacity nor persons acting in cooperation with a law  
3 enforcement official.

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

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

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

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

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

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

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

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

20 (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, fentanyl, or  
2 any combination of heroin and fentanyl;

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

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

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

9 Sec. 2. 18 V.S.A. § 4201(45) is added to read:

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

15 Sec. 3. 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.

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

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.

11           (4) A person knowingly and unlawfully possessing ~~heroin in an amount~~  
12 ~~consisting of~~ two 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.

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. A person knowingly  
20 and unlawfully selling heroin, fentanyl, or any combination of heroin and

1 fentanyl shall be imprisoned not more than five years or fined not more than  
2 \$100,000.00, or both.

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, fentanyl, or any  
6 combination of heroin and fentanyl shall be imprisoned not more than 10 years  
7 or fined not more than \$250,000.00, or both.

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

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

1 heroin and fentanyl intends to sell or dispense the heroin. The amount of  
2 possessed heroin, fentanyl, or any combination of heroin and fentanyl under  
3 this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall  
4 be no less than 10 grams in the aggregate.

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

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

12 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

13 (a) Possession.

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

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

1           (2) A person knowingly and unlawfully possessing a depressant,  
2 stimulant, or narcotic drug, ~~other than heroin or cocaine~~, consisting of 100  
3 times a benchmark unlawful dosage or its equivalent as determined by the  
4 Board of Health by rule shall be imprisoned not more than five years or fined  
5 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 heroin or cocaine~~, consisting of 1,000  
8 times a benchmark unlawful dosage or its equivalent as determined by the  
9 Board of Health by rule shall be imprisoned not more than 10 years or fined  
10 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 heroin or cocaine~~, consisting of 10,000  
13 times a benchmark unlawful dosage or its equivalent as determined by the  
14 Board of Health by rule shall be imprisoned not more than 20 years or fined  
15 not more than \$500,000.00, or both.

16           (5) This subsection shall not apply to heroin, fentanyl, or cocaine.

17           (b) Selling or dispensing.

18           (1) A person knowingly and unlawfully dispensing a depressant,  
19 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be  
20 imprisoned not more than three years or fined not more than \$75,000.00, or  
21 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 by rule shall be imprisoned not more than  
7 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 by rule shall be imprisoned not more than  
12 20 years or fined not more than \$500,000.00, or both.

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

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

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



1 Sec. 5. 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, ~~other than heroin or cocaine,~~ shall be imprisoned not more than  
8 one year or fined not more than \$2,000.00, or both.

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

12 \* \* \*

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

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

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

1       Sec. 6. EFFECTIVE DATE

2       This act shall take effect on passage.