

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 505
3 entitled “An act relating to reclassification of penalties for unlawfully
4 possessing, dispensing, and selling a regulated drug” respectfully reports that it
5 has considered the same and recommends that the bill be amended by striking
6 out all after the enacting clause and inserting in lieu thereof the following:

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

8 § 4215a. SALE OF SCHEDULE V DRUGS

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

14 * * *

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

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

1 § 4223. FRAUD OR DECEIT

2 * * *

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

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

7 § 4229a. FELONY POSSESSION; AFFIRMATIVE DEFENSE

8 (a) In any prosecution for felony possession under section 4230 or sections
9 4231– 4235a of this title, the defendant may raise as an affirmative defense that
10 the amount of the unlawfully possessed drug was intended for personal use by
11 the defendant.

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

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

16 § 4228. UNLAWFUL MANUFACTURE, DISTRIBUTION, DISPENSING,
17 OR SALE OF A NONCONTROLLED DRUG OR SUBSTANCE

18 (a) It is unlawful for any person to knowingly dispense, manufacture,
19 process, package, distribute, or sell or attempt to dispense, manufacture,
20 process, package, distribute, or sell a noncontrolled drug or substance upon
21 either:

1 two mature cannabis plants or four immature cannabis plants. A person who
2 violates this subdivision shall be assessed a civil penalty as follows:

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

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

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

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

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

19 (C) Upon an adjudication of guilt for a first or second offense under
20 this subdivision (2), the court may defer sentencing as provided in 13 V.S.A.
21 § 7041, except that the court may in its discretion defer sentence without the

1 filing of a presentence investigation report and except that sentence may be
2 imposed at any time within two years from and after the date of entry of
3 deferment. The court may, prior to sentencing, order that the defendant submit
4 to a drug assessment screening, which may be considered at sentencing in the
5 same manner as a presentence report.

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

11 (4) A person knowingly and unlawfully possessing more than one pound
12 of cannabis or more than 2.8 ounces of hashish or knowingly and unlawfully
13 cultivating more than six mature cannabis plants or 12 immature cannabis
14 plants ~~shall be imprisoned not more than five years or fined not more than~~
15 ~~\$10,000.00, or both~~ commits a Class E felony.

16 (5) A person knowingly and unlawfully possessing more than 10 pounds
17 of cannabis or more than one pound of hashish or knowingly and unlawfully
18 cultivating more than 12 mature cannabis plants or 24 immature cannabis
19 plants ~~shall be imprisoned not more than 15 years or fined not more than~~
20 ~~\$500,000.00, or both~~ commits a Class D felony.

1 (6) If a court fails to provide the defendant with notice of collateral
2 consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later
3 at any time shows that the plea and conviction for a violation of this subsection
4 may have or has had a negative consequence, the court, upon the defendant’s
5 motion, shall vacate the judgment and permit the defendant to withdraw the
6 plea or admission and enter a plea of not guilty. Failure of the court to advise
7 the defendant of a particular collateral consequence shall not support a motion
8 to vacate.

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

12 (b) Selling or dispensing.

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

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

20 (3) A person knowingly and unlawfully selling or dispensing one pound
21 or more of cannabis or 2.8 ounces or more of hashish ~~shall be imprisoned not~~

1 ~~more than 15 years or fined not more than \$500,000.00, or both~~ commits a
2 Class D felony.

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

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

14 * * *

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

16 § 4230f. DISPENSING CANNABIS TO A PERSON UNDER 21 YEARS
17 OF AGE; CRIMINAL OFFENSE

18 (a) No person shall:

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

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

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

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

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

13 (e)(1) Subsections (a)–(d) of this section shall not apply to a person under
14 21 years of age who dispenses cannabis to a person under 21 years of age or
15 who knowingly enables the consumption of cannabis by a person under
16 21 years of age.

17 (2) A person who is 18, 19, or 20 years of age who knowingly dispenses
18 cannabis to a person who is 18, 19, or 20 years of age commits a civil violation
19 and shall be referred to the Court Diversion Program for the purpose of
20 enrollment in the Youth Substance Awareness Safety Program in accordance

1 with the provisions of section 4230b of this title and shall be subject to the
2 penalties in that section for failure to complete the program successfully.

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

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

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

15 * * *

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

17 § 4230h. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE

18 PROHIBITED

19 (a) No person shall manufacture concentrated cannabis by chemical
20 extraction or chemical synthesis using butane or hexane ~~unless authorized as a~~

1 ~~dispensary pursuant to a registration issued by the Department of Public Safety~~
2 ~~pursuant to chapter 86 of this title.~~

3 (b) A person who violates subsection (a) of this section ~~shall be imprisoned~~
4 ~~not more than two years or fined not more than \$2,000.00, or both~~ commits a
5 Class A misdemeanor. A person who violates subsection (a) of this section
6 and causes serious bodily injury to another person ~~shall be imprisoned not~~
7 ~~more than five years or fined not more than \$5,000.00, or both~~ commits a Class
8 E felony.

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

10 § 4231. COCAINE

11 (a) Possession.

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

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

20 (3) A person knowingly and unlawfully possessing cocaine in an
21 amount consisting of ~~one ounce~~ 30 grams or more of one or more preparations,

1 compounds, mixtures, or substances containing cocaine ~~shall be imprisoned~~
2 ~~not more than 10 years or fined not more than \$250,000.00, or both~~ commits a
3 Class D felony.

4 (4) ~~[Deleted.]~~ [Repealed.]

5 (b) Selling or dispensing.

6 (1) A person knowingly and unlawfully dispensing cocaine ~~shall be~~
7 ~~imprisoned not more than three years or fined not more than \$75,000.00, or~~
8 ~~both~~ commits a Class E felony. A person knowingly and unlawfully selling
9 cocaine ~~shall be imprisoned not more than five years or fined not more than~~
10 ~~\$100,000.00, or both~~ commits a Class D felony.

11 (2) ~~A person knowingly and unlawfully selling or dispensing cocaine in~~
12 ~~an amount consisting of 2.5 grams or more of one or more preparations,~~
13 ~~compounds, mixtures, or substances containing cocaine shall be imprisoned~~
14 ~~not more than 10 years or fined not more than \$250,000.00, or both.~~
15 [Repealed.]

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

21 (c) Trafficking.

1 (1) ~~Trafficking.~~ A person knowingly and unlawfully possessing cocaine
2 in an amount consisting of ~~450~~ 100 grams or more of one or more preparations,
3 compounds, mixtures, or substances containing cocaine with the intent to sell
4 or dispense the cocaine ~~shall be imprisoned not more than 30 years or fined not~~
5 ~~more than \$1,000,000.00, or both~~ commits a Class B felony. There shall be a
6 permissive inference that a person who possesses cocaine in an amount
7 consisting of ~~450~~ 100 grams or more of one or more preparations, compounds,
8 mixtures, or substances containing cocaine intends to sell or dispense the
9 cocaine. The amount of possessed cocaine under this subdivision to sustain a
10 charge of conspiracy under 13 V.S.A. § 1404 shall be ~~no~~ not less than
11 400 grams in the aggregate.

12 (2) ~~A person knowingly and unlawfully possessing crack cocaine in an~~
13 ~~amount consisting of 60 grams or more of one or more preparations,~~
14 ~~compounds, mixtures, or substances containing crack cocaine with the intent to~~
15 ~~sell or dispense the crack cocaine shall be imprisoned not more than 30 years~~
16 ~~or fined not more than \$1,000,000.00, or both. There shall be a permissive~~
17 ~~inference that a person who possesses crack cocaine in an amount consisting of~~
18 ~~60 grams or more of one or more preparations, compounds, mixtures, or~~
19 ~~substances containing crack cocaine intends to sell or dispense the crack~~
20 ~~cocaine.~~ [Repealed.]

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

1 § 4232. LSD

2 (a) Possession.

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

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

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

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

1 (b) Selling or dispensing.

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

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

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

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

19 § 4233. HEROIN; FENTANYL

20 (a) Possession.

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

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

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

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

20 (b) Selling or dispensing.

1 (1) A person knowingly and unlawfully dispensing heroin, fantanyl, or
2 any combination of heroin and fantanyl ~~shall be imprisoned not more than~~
3 ~~three years or fined not more than \$75,000.00, or both~~ commits a Class E
4 felony. A person knowingly and unlawfully selling heroin, fantanyl, or any
5 combination of heroin and fantanyl ~~shall be imprisoned not more than five~~
6 ~~years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

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

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

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

1 inference that a person who possesses ~~heroin in an amount of 3.5~~ 5 grams or
2 more of one or more preparations, compounds, mixtures, or substances
3 containing heroin, fentanyl, or any combination of heroin and fentanyl intends
4 to sell or dispense the heroin, fentanyl, or any combination of heroin and
5 fentanyl. The amount of possessed heroin, fentanyl, or any combination of
6 heroin and fentanyl under this subsection to sustain a charge of conspiracy
7 under 13 V.S.A. § 1404 shall be ~~no~~ not less than 10 grams in the aggregate.

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

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

18 Sec. 11. REPEAL

19 18 V.S.A. § 4233a (fentanyl) is repealed.

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

2 § 1404. CONSPIRACY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

15 (a) Possession.

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

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

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

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

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

20 (b) Selling or dispensing.

1 (1) A person knowingly and unlawfully dispensing a depressant,
2 stimulant, or narcotic drug, ~~other than fentanyl, heroin, or 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 a
5 depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin,
6 ~~shall be imprisoned not more than five years or fined not more than~~
7 ~~\$25,000.00, or both~~ commits a Class D felony.

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 by rule shall be imprisoned not more than~~
12 ~~10 years or fined not more than \$100,000.00, or both. [Repealed.]~~

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 by rule shall be imprisoned not more than~~
17 ~~20 years or fined not more than \$500,000.00, or both. [Repealed.]~~

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

19 (1) Except as provided in subdivision (2) of this subsection, a person
20 under 21 years of age who knowingly and unlawfully possesses 224

1 milligrams or less of buprenorphine commits a civil violation and shall be
2 subject to the provisions of section 4230b of this title.

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

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

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

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

9 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

10 (a) Possession.

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

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

17 * * *

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

19 ~~(1) Except as provided in subdivision (2) of this subsection, a person~~
20 ~~under 21 years of age who knowingly and unlawfully possesses 224~~

1 milligrams or less of buprenorphine commits a civil violation and shall be
2 subject to the provisions of section 4230b of this title.

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

6 * * *

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

8 § 4234a. METHAMPHETAMINE

9 (a) Possession.

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

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

18 (3) A person knowingly and unlawfully possessing methamphetamine
19 in an amount consisting of 25 grams or more of one or more preparations,
20 compounds, mixtures, or substances containing methamphetamine ~~shall be~~

1 ~~imprisoned not more than 10 years or fined not more than \$250,000.00, or both~~
2 commits a Class C felony.

3 (b) Selling and dispensing.

4 (1) A person knowingly and unlawfully dispensing methamphetamine
5 ~~shall be imprisoned not more than three years or fined not more than~~
6 ~~\$75,000.00, or both~~ commits a Class E felony. A person knowingly and
7 unlawfully selling methamphetamine ~~shall be imprisoned not more than five~~
8 ~~years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

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

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

19 (c) Trafficking. A person knowingly and unlawfully possessing
20 methamphetamine in an amount consisting of 300 grams or more of one or
21 more preparations, compounds, mixtures, or substances containing

1 methamphetamine with the intent to sell or dispense the methamphetamine
2 ~~shall be imprisoned not more than 30 years or fined not more than~~
3 ~~\$1,000,000.00, or both~~ commits a Class B felony. There shall be a permissive
4 inference that a person who possesses methamphetamine in an amount
5 consisting of 300 grams or more of one or more preparations, compounds,
6 mixtures, or substances containing methamphetamine intends to sell or
7 dispense the methamphetamine. The amount of possessed methamphetamine
8 under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404
9 shall be ~~no~~ not less than 800 grams in the aggregate

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

11 § 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

12 (a) Possession.

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

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

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

1 (B) ~~commits a Class E felony~~ Class A misdemeanor if the offense
2 involves possession of nine or more grams of ephedrine base, pseudoephedrine
3 base, or phenylpropanolamine base, ~~be imprisoned not more than five years or~~
4 ~~fined not more than \$100,000.00, or both.~~

5 * * *

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

7 § 4235. HALLUCINOGENIC DRUGS

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

15 (b) Possession.

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

20 (2) A person knowingly and unlawfully possessing 10 or more doses of
21 a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be~~

1 ~~imprisoned not more than five years or fined not more than \$25,000.00, or both~~
2 commits a Class A misdemeanor.

3 (3) A person knowingly and unlawfully possessing 100 or more doses of
4 a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be~~
5 ~~imprisoned not more than 10 years or fined not more than \$100,000.00, or both~~
6 commits a Class D felony.

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

11 (c) Selling or dispensing.

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

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

1 (3) A person knowingly and unlawfully selling or dispensing 100 or
2 more doses of a hallucinogenic drug, other than lysergic acid diethylamide,
3 ~~shall be imprisoned not more than 15 years or fined not more than~~
4 ~~\$500,000.00, or both~~ commits a Class C felony.

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

6 § 4235a. ECSTASY

7 (a) Possession.

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

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

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

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

5 [Repealed.]

6 (b) Selling or dispensing.

7 (1) A person knowingly and unlawfully dispensing Ecstasy ~~shall be~~
8 ~~imprisoned not more than three years or fined not more than \$25,000.00, or~~
9 ~~both~~ commits a Class E felony. A person knowingly and unlawfully selling
10 Ecstasy ~~shall be imprisoned not more than five years or fined not more than~~
11 ~~\$25,000.00, or both~~ commits a Class D felony.

12 (2) ~~A person knowingly and unlawfully selling or dispensing Ecstasy in~~
13 ~~an amount consisting of two 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.~~

16 [Repealed.]

17 (3) A person knowingly and unlawfully selling or dispensing Ecstasy in
18 an amount consisting of 20 grams 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~~ commits a
21 Class C felony.

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

2 § 4236. MANUFACTURE OR CULTIVATION

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

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

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

8 § 4237. SELLING OR DISPENSING TO MINORS; SELLING ON SCHOOL
9 GROUNDS

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

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

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

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

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

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

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

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

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

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

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

17 (1) “Minor” means a person under ~~the age of~~ 18 years of age.

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

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

1 § 4249. TRANSPORTATION OF ALCOHOL, TOBACCO, OR
2 REGULATED DRUGS INTO PLACES OF DETENTION

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

5 (1) alcohol or alcoholic beverages;

6 (2) cannabis;

7 (3) a regulated drug, other than cannabis, as defined in section 4201 of
8 this title, except upon the prescription or direction of a practitioner as that term
9 is defined in 26 V.S.A. chapter 36; or

10 (4) tobacco or tobacco products, except that an employee may possess
11 or store tobacco or tobacco products in a locked automobile parked on the
12 correctional facility grounds, store tobacco or tobacco products in a secure
13 place within the correctional facility ~~which~~ that is designated for storage of
14 employee tobacco, and possess tobacco or tobacco products in a designated
15 smoking area.

16 (b) A person who violates subdivision (a)(1) of this section ~~shall be~~
17 ~~imprisoned not more than three months or fined not more than \$300.00, or both~~
18 commits a Class D misdemeanor.

19 (c) A person who violates subdivision (a)(2) of this section ~~shall be~~
20 ~~imprisoned not more than six months or fined not more than \$500.00, or both~~
21 commits a Class D misdemeanor.

1 (d) A person who violates subdivision (a)(3) of this section ~~shall be~~
2 ~~imprisoned not more than one year or fined not more than \$1,000.00, or both~~
3 commits a Class B misdemeanor.

4 * * *

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

6 § 4250. SELLING ~~OR DISPENSING~~ A REGULATED DRUG WITH
7 DEATH RESULTING

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

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

14 (c) As used in this section, “knowingly” includes actual knowledge as well
15 as situations in which a person subjectively believes there is a high probability
16 that a fact exists and takes deliberate actions to avoid learning of that fact in
17 order to deny knowledge if apprehended. A person acts knowingly when the
18 individual acts voluntarily and consciously and not inadvertently, because of a
19 mistake, or by accident.

20

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

2 § 4252. PENALTIES FOR DISPENSING OR SELLING REGULATED
3 DRUGS IN A DWELLING

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

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

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

14 Sec. 23a. 18 V.S.A. § 4256 is added to read:

15 § 4256. DRUG USE STANDARDS ADVISORY BOARD

16 (a) There is hereby created the Drug Use Standards Advisory Board
17 established within the Vermont Sentencing Commission composed of experts
18 in the fields of general and behavioral health care, substance use disorder
19 treatment, and drug user communities.

20 (b) The primary objective of the Board shall be to determine, for each
21 regulated and unregulated drug, the benchmark personal use dosage and the

1 benchmark personal use supply. The benchmarks determined pursuant to this
2 subsection shall be determined with a goal of preventing and reducing the
3 criminalization of personal drug use.

4 (c) The Drug Use Standards Advisory Board shall be convened and chaired
5 by the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs.
6 After receiving nominations from harm reduction service providers, the
7 Deputy Commissioner shall appoint three consumer representatives to the
8 Board who have lived experience in drug use and consumption practices. The
9 Deputy Commissioner and the three consumer representatives shall appoint the
10 remaining Board members as follows:

11 (1) two representatives from harm reduction service providers;

12 (2) an expert on medication-assisted treatment programs;

13 (3) an expert on human behavior and addiction;

14 (4) an expert on substance use disorder treatment;

15 (5) an expert on legal reform from the University of Vermont Law

16 School Center for Justice Reform; and

17 (6) an academic researcher specializing in drug use or drug policy.

18 (d) On or before September 1, 2022, the Drug Use Standards Advisory
19 Board shall provide the recommended quantities for both the benchmark
20 personal use dosage and benchmark personal use supply for each category of

1 regulated drug listed in subdivision 4201(29) of this title to the Sentencing
2 Commission and the General Assembly.

3 (e) On or before December 1, 2022, based on the benchmark personal use
4 dosage and benchmark personal use supply recommendations of the Board, the
5 Sentencing Commission shall make recommendations to the General
6 Assembly regarding adjustments in the amounts for possession, dispensing,
7 and sale of regulated drugs under this chapter.

8 (f) Starting in 2023, the Drug Use Standards Advisory Board shall convene
9 at least one time per year to review benchmarks established pursuant to this
10 section and recommend any necessary amendments to the Sentencing
11 Commission and the General Assembly.

12 (g) As used in this section:

13 (1) “Benchmark personal use dosage” means the quantity of a drug
14 commonly consumed over a 24-hour period for any therapeutic, medicinal, or
15 recreational purpose.

16 (2) “Benchmark personal use supply” means the quantity of a drug
17 commonly possessed for consumption by an individual for any therapeutic,
18 medicinal, or recreational purpose.

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

20 § 4476. OFFENSES AND PENALTIES

1 (a) A person who sells drug paraphernalia to a person under 18 years of age
2 ~~shall be imprisoned for not more than two years or fined not more than~~
3 ~~\$2,000.00, or both~~ commits a Class C misdemeanor.

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

7 Sec. 25. EFFECTIVE DATES

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

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

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18 (Committee vote: _____)

19

20

21

Representative _____

FOR THE COMMITTEE