



State of Vermont
Department of Public Safety
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To: Vermont House Committee on Judiciary
From: Department of Public Safety
Re: H. 505 (**Draft 3.2**) - An act relating to reclassification of penalties for unlawfully possessing, dispensing, and selling a regulated drug
Date: March 8, 2022

The Department of Public Safety and the Vermont Forensic Laboratory (VFL) propose the following changes to House Bill 505, draft 3.2:

1. Page 7, lines 1-3. Delete subsection 4230(d) in its entirety. The VFL does not have the ability to measure the “portion of a cannabis-infused product that is attributable to cannabis.” The VFL can only determine whether a particular substance contains a regulated drug; it cannot determine the proportion or percentage of a regulated drug in an aggregate substance.
2. Page 13, lines 8-11. Delete “via butane or hexane” in the section title, and delete “using butane or hexane” in subsection 4230h(a). Butane and hexane are only two of several solvents used to manufacture concentrated cannabis by chemical extraction, and the VFL does not have the capability to determine what solvent was used to perform the extraction. Limiting this prohibition to only these two methods of chemical extraction means that other methods of chemical extraction remain unprohibited.
3. Page 20, lines 17-21 and page 21, lines 1-14. Add “fentanyl” as a standalone substance to the prohibition on possession. Note that the current offense of fentanyl possession under section 4234 is eliminated in this draft (see page 30, line 19), so there would be no prohibition on possessing fentanyl under this draft. With this proposed change, subdivision 4233(a)(1)-(4) would reflect the language in subdivision (b) for selling and dispensing “heroin, fentanyl, or any combination of heroin and fentanyl.”
4. Page 25, lines 14-15. Delete subsection (4), which reads “This subsection shall apply to fentanyl and any combination of heroin and fentanyl, but not fentanyl combined with any other regulated drug.” Fentanyl is regularly combined with other regulated drugs, both inadvertently and intentionally. Accordingly, this provision may inhibit legitimate criminal prosecutions against those who sell fentanyl that happens to contain any other regulated drug.
5. Add a definition of fentanyl in the definitions section in 18 V.S.A. § 4201 as follows: “(45) ‘Fentanyl’ means fentanyl or any compound, mixture, or preparation including salts, isomers, or salts of isomers containing fentanyl or fentanyl-related substances as defined by Vt. Admin. Code 12-5-23:3.6.”

6. Page 26, lines 8-13. The Department proposes an alternative definition of “knowingly” for the Committee’s consideration, and suggests moving the definition to the definitions section in 18 V.S.A. § 4201: “(46) ‘Knowingly’ shall mean actual knowledge that one or more preparations, compounds, mixtures, or substances contains the regulated drug identified in the applicable section of this chapter, or consciously ignoring a substantial risk that one or more preparations, compounds, mixtures, or substances contains the regulated drug identified in the applicable section of this chapter.” This alternative definition is another way to capture the fact that buyers and sellers do not generally discuss the contents of the substance they are selling or buying; it is often referred to by a slang term and it is assumed it likely contains the relevant substance.

The Department notes that Vermont is a destination for drug trafficking because of high local demand and the perception by drug traffickers that the financial incentives outweigh the risks posed by Vermont’s criminal laws. The Department recognizes the critical role of the public health response to the opioid crisis, and it is mindful of the distinction between the small-scale sale of drugs to support an addiction and the entrepreneurial drug dealers who traffic in large amounts of illegal drugs for profit. With this in mind, there remains a significant responsibility for our criminal justice system to target and reduce the supply of illicit drugs in Vermont. The drug trade is fueling remarkable growth in overdose deaths and drug-related violence in our state. We are witnessing a decade-long three-fold increase in opioid-related fatalities in Vermont, with an overdose death averaging every 2 days.¹ Drug-related violence is on the rise, with drug-related murders occurring with increasing frequency. There are no easy answers to the opioid crisis, but we must still strive to target the supply of drugs entering our state and stop the reckless practice of selling or dispensing lethal drugs to vulnerable Vermonters.

¹ Vermont Department of Health, Opioid-Related Fatalities Among Vermonters, 2020 Annual Data Brief at 2 (March 2021), https://www.healthvermont.gov/sites/default/files/documents/pdf/ADAPopoidFatalityDataBrief2020_Final.pdf (the 2010-2012 average total for opioid-related fatalities is 47, and there were 157 opioid-related fatalities in 2020); Vermont Department of Health, Monthly Opioid Morbidity and Mortality Report (February 14, 2022), <https://www.healthvermont.gov/sites/default/files/documents/pdf/ADAPMonthlyOpioidRelatedFatalities.pdf> (there were 181 opioid-related fatalities through November 2021, averaging less than one death every two days).