H.72


Referred to Committee on

Date:

Subject: Health; human services; regulated drugs; crimes

Statement of purpose of bill as introduced: This bill proposes to eliminate criminal and civil penalties for operation of a safer drug consumption program; repeal the crack statute; repeal the sunset of the decriminalization of small amount of buprenorphine; establish the Drug Use Standards Advisory Board within the Vermont Sentencing Commission for determining benchmarks for
personal use dosage and personal use supply for regulated drugs; and require
the Sentencing Commission to use benchmark recommendations from the
Drug Use Standards Advisory Board to make recommendations regarding
adjustments in the amounts for possession, dispensing, and sale of regulated
drugs.

An act relating to a harm-reduction criminal justice response to drug use
It is hereby enacted by the General Assembly of the State of Vermont:

*** Safer Drug Consumption Programs ***

Sec. 1. 18 V.S.A. § 4254 is amended to read:

§ 4254. IMMUNITY FROM LIABILITY

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   (j)(1) The following persons shall not be cited, arrested, or prosecuted for a violation of this chapter or subject to the property forfeiture provisions of this chapter for participation in or with a safer drug consumption program:

   (A) a person using the services of a safer drug consumption program;

   (B) a staff member or administrator of a safer drug consumption program, including a health care professional, manager, employee, or volunteer; or

   (C) a property owner who owns real property at which a safer drug consumption program is located and operates.
(2) The immunity provisions of this section apply only to the use and
derivative use of evidence gained as a proximate result of participation in or
with a safer drug consumption program.

(k) A safer drug consumption program:

(1) provides a space supervised by health care professionals or other
trained staff where persons who use drugs can consume pre-obtained drugs;

(2) provides sterile injection supplies, collects used hypodermic needles
and syringes, and provides secure hypodermic needle and syringe disposal
services;

(3) answers questions on safe consumption practices;

(4) administers first aid, if needed, and monitors and treats potential
overdoses;

(5) provides referrals to addiction treatment, medical services, and social
services upon request;

(6) educates participants on the risks of contracting HIV and viral
hepatitis, wound care, and safe sex education;

(7) provides overdose prevention education and access to or referrals to
obtain naloxone;

(8) educates participants regarding proper disposal of hypodermic
needles and syringes;

(9) provides reasonable security of the program site;
(10) establishes operating procedures for the program as well as eligibility criteria for program participants; and

(11) trains staff members to deliver services offered by the program.

(1) To receive immunity protections under this section, an entity operating a safer drug consumption program shall make publicly available the following information annually on or before January 15 and July 15:

(1) the number of program participants;

(2) aggregate information regarding the characteristics of the program participants;

(3) the number of hypodermic needles and syringes distributed for use on-site;

(4) the number of overdoses and the number of overdoses reversed on-site; and

(5) the number of participants directly and formally referred to other services and the type of services.

* * * Repeal of Crack Statute * * *

Sec. 2. 18 V.S.A. § 4231 is amended to read:

§ 4231. COCAINE

* * *
(c) **Trafficking.**

(1) **Trafficking.** A person knowingly and unlawfully possessing cocaine in an amount consisting of 150 grams or more of one or more preparations, compounds, mixtures, or substances containing cocaine with the intent to sell or dispense the cocaine shall be imprisoned not more than 30 years or fined not more than $1,000,000.00, or both. There shall be a permissive inference that a person who possesses cocaine in an amount consisting of 150 grams or more of one or more preparations, compounds, mixtures, or substances containing cocaine intends to sell or dispense the cocaine. The amount of possessed cocaine under this subdivision to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be no less than 400 grams in the aggregate.

(2) A person knowingly and unlawfully possessing crack cocaine in an amount consisting of 60 grams or more of one or more preparations, compounds, mixtures, or substances containing crack cocaine with the intent to sell or dispense the crack cocaine shall be imprisoned not more than 30 years or fined not more than $1,000,000.00, or both. There shall be a permissive inference that a person who possesses crack cocaine in an amount consisting of 60 grams or more of one or more preparations, compounds, mixtures, or substances containing crack cocaine intends to sell or dispense the crack cocaine. [Repealed.]
*** Remove Future Repeal of Buprenorphine Exemption ***

Sec. 3. REPEAL

2021 Acts and Resolves No. 46, Secs. 3 (repeal of buprenorphine exemption) and 4(b) (effective date; repeal of buprenorphine exemption) are repealed.

*** Drug Use Standards Advisory Board ***

Sec. 4. 13 V.S.A. § 5453 is added to read:

§ 5453. DRUG USE STANDARDS ADVISORY BOARD

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

(b) The primary objective of the Board shall be to determine, for each regulated and unregulated drug, the benchmark personal use dosage and the benchmark personal use supply. The benchmarks determined pursuant to this subsection shall be determined with a goal of preventing and reducing the criminalization of personal drug use. The Board may provide additional recommendations to the Commission and the General Assembly regarding how to transition from a criminal justice approach to a public health approach to addressing drug possession.
(c)(1) The Board shall be convened and chaired by the Deputy Commissioner of Substance Use Programs. After receiving nominations from harm reduction service providers, the Deputy Commissioner shall appoint three consumer representatives to the Board who have lived experience in drug use and consumption practices. The Deputy Commissioner, after consulting with the three consumer representatives, shall strive for geographic diversity in appointing the remaining Board members as follows:

(A) two representatives from harm reduction service providers;

(B) an expert on medication-assisted treatment programs;

(C) an expert on human behavior and addiction;

(D) an expert on substance use disorder treatment;

(E) an expert on legal reform from the Vermont Law School Center for Justice Reform;

(F) an academic researcher specializing in drug use or drug policy;

and

(G) a representative of law enforcement.

(2) The Chief Prevention Officer shall be a nonvoting member of the Board.

(d) The Board shall have the administrative assistance of the Division of Substance Use Programs.
(e) Members of the Board shall be entitled to per diems pursuant to 32 V.S.A. § 1010 for not more than three meetings to develop initial recommendations required by subsection (f) of this section and once annually thereafter.

(f) On or before September 1, 2023, the Board shall provide to the Commission and the General Assembly:

(1) the recommended quantities for both the benchmark personal use dosage and benchmark personal use supply for each category of regulated drug listed in 18 V.S.A. § 4201(29); and

(2) a recommendation as to whether 18 V.S.A. § 4233 (heroin) and 18 V.S.A. § 4233a (fentanyl) should be combined into one statute.

(g) On or before December 1, 2023, based on the benchmark personal use dosage and benchmark personal use supply recommendations of the Board, the Commission shall make recommendations to the General Assembly regarding adjustments in the amounts for possession, dispensing, and sale of regulated drugs under this chapter and a proposal for combining the heroin and fentanyl statutes if recommended by the Board.

(h) Starting in 2024, the Board shall convene at least one time per year to review benchmarks established pursuant to this section and recommend any necessary amendments to the Commission and the General Assembly.

(i) As used in this section:
(1) “Benchmark personal use dosage” means the quantity of a drug commonly consumed over a 24-hour period for any therapeutic, medicinal, or recreational purpose.

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

Sec. 5. SUNSET OF DRUG USE STANDARDS ADVISORY BOARD

13 V.S.A. § 5453 (Drug Use Standards Advisory Board) is repealed on July 1, 2028.

*** Effective Date ***

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.