

1 H.767

2 Introduced by Representatives Goslant of Northfield, Oliver of Sheldon,  
3 Arrison of Weathersfield, Bartley of Fairfax, Beck of St.  
4 Johnsbury, Branagan of Georgia, Brennan of Colchester,  
5 Clifford of Rutland City, Demar of Enosburgh, Graham of  
6 Williamstown, Gregoire of Fairfield, Hango of Berkshire,  
7 Harrison of Chittenden, Maguire of Rutland City, McFaun of  
8 Barre Town, Morgan of Milton, Morrissey of Bennington,  
9 Parsons of Newbury, Peterson of Clarendon, Shaw of Pittsford,  
10 Smith of Derby, Taylor of Milton, Toof of St. Albans Town,  
11 and Walker of Swanton

12 Referred to Committee on

13 Date:

14 Subject: Regulated drugs; fentanyl; use of a minor in drug crimes; second and  
15 subsequent offenses; selling or dispensing a regulated drug with death  
16 resulting

17 Statement of purpose of bill as introduced: This bill proposes to amend the  
18 definition of knowingly for purposes of liability in drug offenses; increase  
19 penalties for drug crimes involving use of a minor; increase penalties for  
20 second and subsequent offenses for trafficking; in a prosecution for dispensing  
21 or selling a regulated drug with death resulting, prohibit using the fact that a

1 substance contained more than one regulated drug from being a defense if the  
2 proximate cause of death is the use of the dispensed or sold substance  
3 containing more than one regulated drug; and require that the mandatory  
4 minimum sentences for subsequent trafficking offenses and dispensing or sale  
5 of a regulated drug with death resulting be served unless the court makes  
6 written findings on the record that such an alternative sentence will serve the  
7 interests of justice.

8 An act relating to increasing penalties for drug-related offenses

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

10 Sec. 1. 18 V.S.A. § 4201 is amended to read:

11 § 4201. DEFINITIONS

12 \* \* \*

13 (48) “Fentanyl” means fentanyl or any compound, mixture, or  
14 preparation including salts, isomers, or salts of isomers containing fentanyl or  
15 fentanyl-related substances as defined by rule in accordance with this chapter.

16 (49) “Knowingly” means actual knowledge that one or more  
17 preparations, compounds, mixtures, or substances contains the regulated drug  
18 identified in the applicable section of this chapter, or consciously ignoring a  
19 substantial risk that one or more preparations, compounds, mixtures, or

1 substances contains the regulated drug identified in the applicable section of  
2 this chapter.

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

4 § 4237. SELLING OR DISPENSING TO MINORS; SELLING ON SCHOOL  
5 GROUNDS; USE OF MINOR TO VIOLATE THIS CHAPTER

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

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

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

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

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

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

1 (d) Use of minors.

2 (1) A person shall not knowingly employ, hire, use, persuade, induce,  
3 entice, or coerce a minor to violate any provision of this chapter.

4 (2) A person shall not knowingly employ, hire, use, persuade, induce,  
5 entice, or coerce a minor to assist in avoiding detection or apprehension for  
6 any offense of this chapter.

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

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

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

14 ~~(e)~~(f) Penalty.

15 (1) A person who violates subsection (c) of this section shall, in addition  
16 to any other penalty, be sentenced to a term of imprisonment of not more than  
17 10 years.

18 (2) A person who violates subdivision (d)(1) or (2) of this section:

19 (A) For a first offense, shall be subject to twice the maximum  
20 punishment otherwise authorized by law. Except to the extent a greater

1 minimum sentence is otherwise provided, a term of imprisonment under this  
2 subsection (f) shall not be less than one year.

3 (B) For a second offense, shall be subject to three times the  
4 maximum punishment otherwise authorized by law. Except to the extent a  
5 greater minimum sentence is otherwise provided, a term of imprisonment  
6 under this subsection (f) shall not be less than one year.

7 ~~(f)~~(g) Definitions. As used in this section:

8 (1) “Minor” means a person under ~~the age of 18~~ 19 years of age.

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

12 Sec. 3. 18 V.S.A. § 4238 is amended to read:

13 § 4238. SECOND AND SUBSEQUENT OFFENSES

14 (a) Penalty. A Except as provided in subsection (b) of this section, a  
15 person convicted of a second or subsequent offense of violating section 4228,  
16 4230, 4231, 4232, 4233, 4234, 4235, 4236, or 4237 of this title, except a  
17 violation of subdivision 4230(a)(1), or a comparable offense in another  
18 jurisdiction of the United States, shall be subject to a term of imprisonment or  
19 fined up to twice that authorized by those sections, or both.

20 (b) Trafficking.

1           (1) A person convicted of a second or subsequent offense for trafficking  
2           a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c),  
3           4233a(b), or 4234a(c) of this title, or a comparable offense in another  
4           jurisdiction of the United States, shall be imprisoned not less than three years  
5           and not more than 30 years or fined not more than \$2,000,000.00, or both.

6           (2) Except as provided in subdivision (3) of this subsection, the three-  
7           year minimum term of imprisonment required by this section shall be served  
8           and shall not be suspended, deferred, or served as a supervised sentence. The  
9           defendant shall not be eligible for probation, parole, furlough, or any other type  
10          of early release until the expiration of the three-year term of imprisonment.

11          (3) Notwithstanding subdivision (2) of this subsection, the court may  
12          impose a sentence that does not include a term of imprisonment or that  
13          includes a term of imprisonment of less than three years if the court makes  
14          written findings on the record that such a sentence will serve the interests of  
15          justice.

16          Sec. 4. 18 V.S.A. § 4250 is amended to read:

17          § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH  
18                                  DEATH RESULTING

19           (a) If the death of a person results from the selling or dispensing of a  
20          regulated drug to the person in violation of this chapter, the person convicted

1 of the violation shall be imprisoned not less than two years nor more than 20  
2 years.

3 (b) This section shall apply only if the person's use of the regulated drug is  
4 the proximate cause of ~~his or her~~ the person's death. The fact that a dispensed  
5 or sold substance contains more than one regulated drug shall not be a defense  
6 under this section if the proximate cause of death is the use of the dispensed or  
7 sold substance containing more than one regulated drug. There shall be a  
8 permissive inference that the proximate cause of death is the person's use of  
9 the regulated drug if the regulated drug contains fentanyl.

10 (c)(1) Except as provided in subdivision (2) of this subsection, the two-year  
11 minimum term of imprisonment required by this section shall be served and  
12 shall not be suspended, deferred, or served as a supervised sentence. The  
13 defendant shall not be eligible for probation, parole, furlough, or any other type  
14 of early release until the expiration of the two-year term of imprisonment.

15 (2) Notwithstanding subdivision (1) of this subsection, the court may  
16 impose a sentence that does not include a term of imprisonment or that  
17 includes a term of imprisonment of less than two years if the court makes  
18 written findings on the record that the sentence will serve the interests of  
19 justice.

20 Sec. 5. EFFECTIVE DATE

21 This act shall take effect on July 1, 2024.