

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 58
3 entitled “An act relating to increasing the penalties for subsequent offenses for
4 trafficking and dispensing or sale of a regulated drug with death resulting”
5 respectfully reports that it has considered the same and recommends that the
6 bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

8 * * * Big 12 Juvenile Offenses * * *

9 Sec. 1. 33 V.S.A. § 5201 is amended to read:

10 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

11 * * *

12 (c)(1) Any proceeding concerning a child who is alleged to have committed
13 an act specified in subsection 5204(a) of this title after attaining 14 years of
14 age, but not 22 years of age, shall originate in the Criminal Division of the
15 Superior Court, provided that jurisdiction may be transferred in accordance
16 with this chapter and chapter 52A of this title, unless the State’s Attorney files
17 the charge directly as a youthful offender petition in the Family Division.

18 (2)(A) Any proceeding concerning a child who is alleged to have
19 committed one of the following acts after attaining 14 years of age, but not
20 22 years of age, shall originate in the Criminal Division of the Superior Court,
21 provided that jurisdiction may be transferred in accordance with this chapter

1 and chapter 52A of this title, unless the State’s Attorney files the charge
2 directly as a youthful offender petition in the Family Division:

3 (i) a violation of a condition of release as defined in 13 V.S.A.
4 § 7559 imposed by the Criminal Division for any of the offenses listed in
5 subsection 5204(a) of this title; or

6 (ii) a violation of a condition of release as defined in 13 V.S.A.
7 § 7559 imposed by the Criminal Division for an offense that was transferred
8 from the Family Division pursuant to section 5204 of this title.

9 (B) This subdivision (2) shall not apply to a proceeding that is the
10 subject of a final order accepting the case for youthful offender treatment
11 pursuant to subsection 5281(d) of this title.

12 (3) Any proceeding concerning a child who is alleged to have
13 committed one of the following acts after attaining 16 years of age, but not 22
14 years of age, shall originate in the Criminal Division of the Superior Court,
15 provided that jurisdiction may be transferred in accordance with this chapter
16 and chapter 52A of this title, unless the State’s Attorney files the charge
17 directly as a youthful offender petition in the Family Division:

18 (i) using a firearm while committing a felony in violation of
19 13 V.S.A. § 4005, or an attempt to commit that offense;

20 (ii) trafficking a regulated drug in violation of 18 V.S.A. chapter
21 84, subchapter 1, or an attempt to commit that offense; or

1 Superior Court, provided that jurisdiction may be transferred in accordance
2 with this chapter.

3 Sec. 6. 33 V.S.A. § 5203 is amended to read:

4 § 5203. TRANSFER FROM OTHER COURTS

5 (a) If it appears to a Criminal Division of the Superior Court that the
6 defendant was under ~~19~~ 20 years of age at the time the offense charged was
7 alleged to have been committed and the offense charged is an offense not
8 specified in subsection 5204(a) of this title, that court shall forthwith transfer
9 the proceeding to the Family Division of the Superior Court under the
10 authority of this chapter, and the minor shall then be considered to be subject
11 to this chapter as a child charged with a delinquent act.

12 * * *

13 (c) If it appears to the State’s Attorney that the defendant was under ~~19~~ 20
14 years of age at the time the felony offense charged was alleged to have been
15 committed and the felony charged is not an offense specified in subsection
16 5204(a) of this title, the State’s Attorney shall file charges in the Family
17 Division of the Superior Court, pursuant to section 5201 of this title. The
18 Family Division may transfer the proceeding to the Criminal Division pursuant
19 to section 5204 of this title.

20 * * *

1 Sec. 7. 33 V.S.A. § 5204(a) is amended to read:

2 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
3 COURT

4 (a) After a petition has been filed alleging delinquency, upon motion of the
5 State’s Attorney and after hearing, the Family Division of the Superior Court
6 may transfer jurisdiction of the proceeding to the Criminal Division of the
7 Superior Court if the child had attained 16 years of age but not ~~19~~ 20 years of
8 age at the time the act was alleged to have occurred and the delinquent act set
9 forth in the petition is a felony not specified in subdivisions (1)–(11) of this
10 subsection or if the child had attained 12 years of age but not 14 years of age at
11 the time the act was alleged to have occurred, and if the delinquent act set forth
12 in the petition was any of the following:

13 * * *

14 Sec. 8. 33 V.S.A. § 5103(c) is amended to read:

15 (c)(1) Except as otherwise provided by this title and by subdivision (2) of
16 this subsection, jurisdiction over a child shall not be extended beyond the
17 child’s 18th birthday.

18 (2)(A) Jurisdiction over a child with a delinquency may be extended
19 until six months beyond the child’s:

20 (i) 19th birthday if the child was 16 or 17 years of age when ~~he or~~
21 ~~she~~ the child committed the offense; ~~or~~

1 progress reports required by this section shall describe the steps taken to
2 implement the following goals:

3 (1) establishing a secure residential facility;

4 (2) expanding capacity for nonresidential treatment programs to provide
5 community-based services;

6 (3) ensuring that residential treatment programs are used appropriately
7 and to their full potential;

8 (4) expanding capacity for Balanced and Restorative Justice (BARJ)
9 contracts;

10 (5) expanding capacity for the provision of services to children with
11 developmental disabilities;

12 (6) establishing a stabilization program for children who are
13 experiencing a mental health crisis;

14 (7) enhancing long-term treatment for children;

15 (8) programming to help children, particularly 18- and 19-year-olds,
16 transition from youth to adulthood;

17 (9) developing district-specific data and information on family services
18 workforce development, including turnover, retention, and vacancy rates; times
19 needed to fill open positions; training opportunities and needs; and instituting a
20 positive culture for employees;

1 (48) “Fentanyl” means any quantity of fentanyl, including any
2 compound, mixture, or preparation including salts, isomers, or salts of isomers
3 containing fentanyl. “Fentanyl” also means fentanyl-related substances as
4 defined in rules adopted by the Department of Health pursuant to section 4202
5 of this title.

6 (49) “Knowingly” means actual knowledge that one or more
7 preparations, compounds, mixtures, or substances contains the regulated drug
8 identified in the applicable section of this chapter, or consciously ignoring a
9 substantial risk that one or more preparations, compounds, mixtures, or
10 substances contains the regulated drug identified in the applicable section of
11 this chapter.

12 (50) “Xylazine” means any compound, mixture, or preparation
13 including salts, isomers, or salts of isomers containing N-(2,6-
14 dimethylphenyl)-5,6-dihydro-4H-1,3-thiazin-2-amine.

15 Sec. 12. 18 V.S.A. § 4233b is added to read:

16 § 4233b. XYLAZINE

17 (a) No person shall possess, dispense, or sell xylazine except as provided in
18 subsection (b) of this section.

19 (b) The following are permitted activities related to xylazine:

20 (1) dispensing or prescribing for, or administration to, a nonhuman
21 species of a drug containing xylazine approved by the Secretary of Health and

1 Human Services pursuant to section 512 of the Federal Food, Drug, and
2 Cosmetic Act as provided in 21 U.S.C. § 360b;

3 (2) dispensing or prescribing for, or administration to, a nonhuman
4 species permissible pursuant to section 512(a)(4) of the Federal Food, Drug,
5 and Cosmetic Act as provided in 21 U.S.C. § 360b(a)(4);

6 (3) manufacturing, distribution, or use of xylazine as an active
7 pharmaceutical ingredient for manufacturing an animal drug approved under
8 section 512 of the Federal Food, Drug, and Cosmetic Act as provided in
9 21 U.S.C. § 360b or issued an investigation use exemption pursuant to section
10 512(j);

11 (4) manufacturing, distribution, or use of a xylazine bulk chemical for
12 pharmaceutical compounding by licensed pharmacists or veterinarians; and

13 (5) any other use approved or permissible under the Federal Food, Drug,
14 and Cosmetic Act.

15 (c) A person knowingly and unlawfully dispensing xylazine shall be
16 imprisoned not more than three years or fined not more than \$75,000.00, or
17 both. A person knowingly and unlawfully selling xylazine shall be imprisoned
18 not more than five years or fined not more than \$100,000.00, or both.

19 Sec. 13. 18 V.S.A. § 4250 is amended to read:

20 § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH
21 DEATH RESULTING

1 (a) If the death of a person results from the selling or dispensing of a
2 regulated drug to the person in violation of this chapter, the person convicted
3 of the violation shall be imprisoned not less than two years nor more than
4 20 years.

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

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

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

1 Sec. 14. 18 V.S.A. § 4252a is added to read:

2 § 4252a. UNLAWFUL DRUG ACTIVITY IN A DWELLING; FLASH

3 CITATION; CONDITIONS OF RELEASE

4 (a) Except for good cause shown, a person cited or arrested for dispensing
5 or selling a regulated drug in violation of this chapter shall be arraigned on the
6 next business day after the citation or arrest if the alleged illegal activity
7 occurred at a dwelling where the person is not a legal tenant.

8 (b) Unless the person is held without bail for another offense, the State’s
9 Attorney shall request conditions of release for a person subject to subsection
10 (a) of this section. The court may include as a condition of release that the
11 person is prohibited from coming within a fixed distance of the dwelling.

12 * * * Eviction Process Based on Tenant’s Criminal Activity, Illegal Drug
13 Activity, or Acts of Violence * * *

14 Sec. 15. 9 V.S.A. § 4467 is amended to read:

15 § 4467. TERMINATION OF TENANCY; NOTICE

16 * * *

17 (b) Termination for breach of rental agreement.

18 (1) The landlord may terminate a tenancy for failure of the tenant to
19 comply with a material term of the rental agreement or with obligations
20 imposed under this chapter by actual notice given to the tenant at least 30 days
21 prior to the termination date specified in the notice.

1 change in use of the park land or parts thereof or a termination of the mobile
2 home park, and only in accordance with the following procedure:

3 ~~(1)~~(A) A leaseholder shall not be evicted by force or any other self-help
4 measure.

5 ~~(2)~~(B) Prior to the commencement of any eviction proceeding, the park
6 owner shall notify the leaseholder by certified or registered mail, except as
7 provided in subdivision ~~(3)~~(C) of this ~~subsection~~ subdivision (a)(1):

8 ~~(A)~~(i) of the grounds for an eviction proceeding;

9 ~~(B)~~(ii) for an eviction based on nonpayment of rent, that an eviction
10 proceeding may be commenced if the leaseholder does not pay the overdue
11 rent within 20 days from the date of the mailing of the notice; and

12 (iii) for an eviction based on the leaseholder's criminal activity,
13 illegal drug activity, or acts of violence, any of which threaten the health or
14 safety of other residents, that an eviction proceeding may be commenced seven
15 days following the date of the mailing of the notice.

16 ~~(3)~~(C) A substantial violation of the lease terms of the mobile home
17 park or an additional nonpayment of rent occurring within six months of the
18 giving of the notice referred to in subdivision ~~(2)~~(B) of this ~~subsection~~
19 subdivision (a)(1) may result in immediate eviction proceedings.

20 ~~(4)~~(D) A substantial violation of the lease terms, other than an uncured
21 nonpayment of rent, will be insufficient to support a judgment of eviction

1 unless the proceeding is commenced within 60 days of the last alleged
2 violation. A substantial violation of the lease terms based upon criminal
3 activity will be insufficient to support a judgment of eviction unless the
4 proceeding is commenced ~~no~~ not later than 60 days after arraignment.

5 ~~(5)(E)~~ [Repealed.]

6 (2) Any criminal activity, illegal drug activity, or acts of violence, any
7 of which threaten the health or safety of other residents, by the leaseholder
8 shall be deemed a substantial violation of the lease terms of the mobile home
9 park for purposes of this section. An eviction proceeding commenced against
10 a leaseholder on this basis shall be subject to the expedited eviction process
11 under 12 V.S.A. § 4857.

12 * * *

13 Sec. 18. 12 V.S.A. § 4857 is added to read:

14 § 4857. EVICTION BASED ON CRIMINAL ACTIVITY, ILLEGAL DRUG
15 ACTIVITY, OR ACTS OF VIOLENCE; EXPEDITED PROCESS

16 For any action against a tenant or leaseholder for possession based on the
17 tenant’s or leaseholder’s criminal activity, illegal drug activity, or acts of
18 violence, any of which threaten the health or safety of other residents, under 9
19 V.S.A. § 4467(b)(2) or 10 V.S.A. § 6237(a), a tenant or leaseholder shall:

20 (1) answer the summons and complaint within 10 days after being
21 served; and

1 (2) file any counterclaims within 14 days after being served.

2 Sec. 19. 12 V.S.A. § 4854 is amended to read:

3 § 4854. JUDGMENT FOR PLAINTIFF; WRIT OF POSSESSION

4 (a) If the court finds that the plaintiff is entitled to possession of the
5 premises, the plaintiff shall have judgment for possession and rents due,
6 damages, and costs, and when a written rental agreement so provides, the court
7 may award reasonable attorney’s fees.

8 (b) A writ of possession shall issue on the date judgment is entered, unless
9 the court for good cause orders a stay. The writ shall direct the sheriff of the
10 county in which the property or a portion thereof is located to serve the writ
11 upon the defendant and, not earlier than 14 days after the writ is served, to put
12 the plaintiff into possession.

13 (c) Notwithstanding subsection (b) of this section, if the basis for
14 termination of the tenancy giving rise to the eviction action was the tenant’s or
15 leaseholder’s criminal activity, illegal drug activity, or acts of violence, any of
16 which threaten the health or safety of other residents, under 9 V.S.A.
17 § 4467(b)(2) or 10 V.S.A. § 6237(a), the writ of possession shall direct the
18 sheriff to put the plaintiff into possession not earlier than seven days after the
19 writ is served.

1

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Senator _____

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FOR THE COMMITTEE