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S.58

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Introduced by Senator Sears

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Referred to Committee on

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Date:

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Subject: Regulated drugs; fentanyl; second and subsequent offenses; selling or

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dispensing a regulated drug with death resulting

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Statement of purpose of bill as introduced: This bill proposes to amend the

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definition of knowingly for purposes of liability in drug offenses; increase

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penalties for second and subsequent offenses for trafficking; in a prosecution

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for dispensing or selling a regulated drug with death resulting, prohibit using

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the fact that a substance contained more than one regulated drug from being a

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defense if the proximate cause of death is the use of the dispensed or sold

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substance containing more than one regulated drug; and require that the

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mandatory minimum sentences for subsequent trafficking offenses and

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dispensing or sale of a regulated drug with death resulting be served unless the

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court makes written findings on the record that such an alternative sentence

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will serve the interests of justice.

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An act relating to increasing the penalties for subsequent offenses for

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trafficking and dispensing or sale of a regulated drug with death resulting

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

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

3 § 4201. DEFINITIONS

4 * * *

5 (45) “Fentanyl” means any quantity of fentanyl, including any
6 compound, mixture, or preparation including salts, isomers, or salts of isomers
7 containing fentanyl. ~~or~~ “Fentanyl” shall also mean fentanyl-related substances
8 as defined rules adopted by the Department of Health under section 4202 of
9 this title.

10 (46) “Knowingly” means actual knowledge that one or more
11 preparations, compounds, mixtures, or substances contains the regulated drug
12 identified in the applicable section of this chapter, or consciously ignoring a
13 substantial risk that one or more preparations, compounds, mixtures, or
14 substances contains the regulated drug identified in the applicable section of
15 this chapter.

16 Sec. 2. 18 V.S.A. § 4238 is amended:

17 § 4238. SECOND AND SUBSEQUENT OFFENSES

18 (a) Penalty. A Except as provided in subsection (b) of this section, a
19 person convicted of a second or subsequent offense of violating section 4228,
20 4230, 4231, 4232, 4233, 4234, 4235, 4236 or 4237 of this title, except a
21 violation of subdivision 4230(a)(1), or a comparable offense in another

1 jurisdiction of the United States, shall be subject to a term of imprisonment or
2 fined up to twice that authorized by those sections, or both.

3 (b) Trafficking.

4 (1) A person convicted of a second or subsequent offense for trafficking
5 a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c),
6 4233a(b), or 4234a(c) of this title, or a comparable offense in another
7 jurisdiction of the United States, shall be imprisoned not less than three years
8 and not more than 30 years or fined not more than \$2,000,000.00, or both.

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

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

19 Sec. 3. 18 V.S.A. § 4250 is amended to read:

20 § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH

21 DEATH RESULTING

Commented [TL1]: SAS EC/EDO does not feel that this needs to be included. Happy to discuss.

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 20
4 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, or that the deceased
8 consumed more than one regulated drug, shall not be a defense under this
9 section if the proximate cause of death is the use of the dispensed or sold
10 substance containing more than one regulated drug or the consumption of more
11 than one regulated drug. There shall be a rebuttable presumption that each
12 substance is the proximate cause of death if the cause of death is caused by a
13 mixture of drugs.

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

19 (2) Notwithstanding subdivision (1) of this subsection, the court may
20 impose a sentence that does not include a term of imprisonment or that
21 includes a term of imprisonment of less than two years if the court makes

Commented [TL2]: On the use of the term "mixture of drugs" Leg Co could/should perhaps use whatever the Medical Examiner uses as to the correct term or define the term ... It may be something to the effect of *mixed drug intoxication* etc. Leg Co could check with Health Dept. to see what term the Medical Examiner uses in practice.

1 written findings on the record that the sentence will serve the interests of

2 justice.

3 Sec. 4. EFFECTIVE DATE

4 This act shall take effect on July 1, 2023.

Commented [TL3]: SAS EC/EDO does not feel that this needs to be included. Happy to discuss.