

1 H.200

2 Introduced by Representatives Pearson of Burlington, Komline of Dorset,
3 Waite-Simpson of Essex, Burditt of West Rutland, Burke of
4 Brattleboro, Clarkson of Woodstock, Cole of Burlington,
5 Condon of Colchester, Cross of Winooski, Davis of
6 Washington, Deen of Westminster, Donovan of Burlington,
7 Fisher of Lincoln, Frank of Underhill, French of Randolph,
8 Head of South Burlington, Hooper of Montpelier, Juskiewicz of
9 Cambridge, Kitzmiller of Montpelier, Krowinski of Burlington,
10 Macaig of Williston, Marek of Newfane, Masland of Thetford,
11 McCarthy of St. Albans City, McCormack of Burlington,
12 Michelsen of Hardwick, Mitchell of Fairfax, Mrowicki of
13 Putney, O'Sullivan of Burlington, Peltz of Woodbury,
14 Rachelson of Burlington, Ram of Burlington, Spengler of
15 Colchester, Till of Jericho, Toleno of Brattleboro, Wizowaty of
16 Burlington, Woodward of Johnson, Young of Glover, and Zagar
17 of Barnard

18 Referred to Committee on

19 Date:

20 Subject: Health; regulated drugs; marijuana

Statement of purpose of bill as introduced: This bill proposes to replace criminal penalties with a civil fine for possession of two ounces of marijuana, two mature marijuana plants and seven immature plants, and by a person 21 years of age or older. A person who is under the age of 21 who is caught with marijuana in an amount within the possession limit for an adult civil offense is subject to the same penalties as provided in law for underage possession of alcohol. Fines collected by the Judicial Bureau for enforcement of civil penalties established in this bill shall be divided between the State for funding of law enforcement officers on the Drug Task Force and the Court Diversion Program for funding of the Drug Awareness and Safety Program.

An act relating to civil penalties for possession of marijuana

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

~~Sec. 1. 18 V.S.A. § 4230a is added to read:~~

~~§ 4230a. MARIJUANA; CIVIL PENALTY~~

~~(a) No person shall knowingly and unlawfully possess marijuana.~~

~~(b) A person 21 years of age or older who violates this section shall be assessed a civil penalty of not more than \$100.00.~~

~~(c)(1) Except as otherwise provided in this section, a person under the age of 21 who violates subsection (a) of this section shall be punished in~~

1 ~~accordance with the provisions set forth in 7 V.S.A. §§ 656 and 657, regarding~~
2 minors misrepresenting age and procuring, possessing, or consuming liquors.

3 (2) In lieu of the Alcohol Safety Program required pursuant to 7 V.S.A.
4 §§ 656 and 657, the Diversion Board shall register the person for a Drug
5 Awareness and Safety Program. The Program, which the Diversion Board
6 shall establish pursuant to this section, shall provide at least four hours of
7 classroom instruction or group discussion and ten hours of community service.
8 The subject matter of the Program shall be specific to the use and abuse of
9 marijuana and other regulated drugs, with particular emphasis on early
10 detection and prevention of drug abuse.

11 (d)(1) Except as otherwise provided in this section, a person who possesses
12 marijuana in an amount equal to or less than the amount in subdivision
13 4230(a)(1) (criminal possession of marijuana) or who possesses paraphernalia
14 for marijuana use shall not be penalized or sanctioned in any manner by the
15 State or any of its political subdivisions or denied any right or privilege under
16 state law.

17 (2) A violation of this section shall not result in the creation of a
18 criminal history record of any kind, and no information about the violation
19 shall be maintained in any criminal record or database.

1 ~~(e) This section shall not:~~

2 ~~(1) exempt any person from arrest or prosecution for being under the~~
3 ~~influence of marijuana while operating a vehicle of any kind;~~

4 ~~(2) be construed to repeal or modify existing laws or policies concerning~~
5 ~~the operation of vehicles of any kind while under the influence of marijuana;~~

6 ~~(3) be construed to prohibit a municipality from regulating, prohibiting,~~
7 ~~or providing additional penalties for the use of marijuana in public places;~~

8 ~~(4) be construed to limit the authority of primary and secondary schools~~
9 ~~to impose noncriminal penalties for the possession of marijuana on school~~
10 ~~property;~~

11 ~~(5) be construed to affect the search and seizure laws afforded to duly~~
12 ~~authorized law enforcement officers under the laws of this State.~~

13 ~~(f) If a person suspected of violating this section challenges the presence of~~
14 ~~cannabinoids, the person may request that the state crime laboratory test the~~
15 ~~substance at the person's expense. If the substance tests negative for the~~
16 ~~presence of cannabinoids, the State shall reimburse the person at state expense.~~

17 ~~(g) Upon request by a law enforcement officer who reasonably suspects~~
18 ~~that a person has committed or is committing a violation of this section, the~~
19 ~~person shall give his or her name and address to the law enforcement officer~~
20 ~~and shall produce a Vermont operator's license, a Vermont identification card,~~
21 ~~a passport, or another suitable form of identification.~~

1 ~~(h) The enforcement of this section by villages, towns, and cities shall be~~
2 ~~by a local law enforcement officer or a law enforcement officer by contract~~
3 ~~with the village, town, or city. Law enforcement officers under this subsection~~
4 ~~shall have met minimum training requirements as provided in 20 V.S.A.~~
5 ~~§ 2358.~~

6 ~~(i) Fifty percent of the fines imposed by the Judicial Bureau for violations~~
7 ~~of this section shall be retained by the State for the funding of law enforcement~~
8 ~~officers on the Drug Task Force, except for a \$12.50 administrative charge for~~
9 ~~each violation which shall be retained by the State. The remaining 50 percent~~
10 ~~shall be paid to the Court Diversion Program for funding of the Drug~~
11 ~~Awareness and Safety Program as required by this section.~~

12 Sec. 2. 18 V.S.A. § 4201(43) is added to read:

13 ~~(43) "Immature marijuana plant" and "mature marijuana plant" shall~~
14 ~~have the same meaning as provided in chapter 86 of this title (therapeutic use~~
15 ~~of cannabis).~~

16 Sec. 3. 18 V.S.A. § 4230 is amended to read:

17 § 4230. MARIJUANA

18 (a) Possession and cultivation.

19 (1) A person knowingly and unlawfully possessing an aggregate of more
20 than two mature marijuana plants, seven immature marijuana plants, and two
21 ounces of marijuana shall be imprisoned not more than six months or fined not

1 ~~more than \$500.00, or both. A person convicted of a second or subsequent~~
2 offense under this subdivision shall be imprisoned not more than two years or
3 fined not more than \$2,000.00, or both. Upon an adjudication of guilt for a
4 first offense under this subdivision, the court may defer sentencing as provided
5 in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence
6 without the filing of a presentence investigation report and except that sentence
7 may be imposed at any time within two years from and after the date of entry
8 of deferment. The court may, prior to sentencing, order that the defendant
9 submit to a drug assessment screening which may be considered at sentencing
10 in the same manner as a presentence report. Possession of more than two
11 mature marijuana plants or more than seven immature marijuana plants or
12 more than two ounces of marijuana shall be a violation of this section.

13 (2) ~~A person knowingly and unlawfully possessing marijuana in an~~
14 ~~amount consisting of one or more preparations, compounds, mixtures, or~~
15 ~~substances of an aggregate weight of two ounces or more containing any of~~
16 ~~marijuana or knowingly and unlawfully cultivating more than three plants of~~
17 ~~marijuana shall be imprisoned not more than three years or fined not more than~~
18 ~~\$10,000.00, or both.~~

19 (3) ~~A person knowingly and unlawfully possessing marijuana in an~~
20 ~~amount consisting of one or more preparations, compounds, mixtures, or~~
21 ~~substances of an aggregate weight of one pound or more containing any of~~

1 ~~marijuana or knowingly and unlawfully cultivating more than 10 plants of~~
2 marijuana shall be imprisoned not more than five years or fined not more than
3 \$100,000.00, or both.

4 (4) A person knowingly and unlawfully possessing ~~marijuana in an~~
5 ~~amount consisting of one or more preparations, compounds, mixtures, or~~
6 ~~substances of an aggregate weight of 10 pounds or more~~ of marijuana or
7 knowingly and unlawfully cultivating more than 25 plants of marijuana shall
8 be imprisoned not more than 15 years or fined not more than \$500,000.00, or
9 both.

10 * * *

11 (d) Only the portion of a marijuana-infused product that is attributable to
12 marijuana shall count toward the possession limits of this section. The weight
13 of marijuana that is attributable to marijuana-infused products shall be
14 determined according to methods set forth in rule by the Department of Public
15 Safety in accordance with chapter 86 of this title (therapeutic use of cannabis).

16 Sec. 4. 4 V.S.A. § 1102 is amended to read:

17 § 1102. JUDICIAL BUREAU; JURISDICTION

18 * * *

19 (b) The ~~judicial bureau~~ Judicial Bureau shall have jurisdiction of the
20 following matters:

21 * * *

1 ~~(24) Violations of 18 V.S.A. § 4230a, relating to possession of~~
2 marijuana.

3 * * *

4 Sec. 5. EFFECTIVE DATE

5 ~~This act shall take effect on July 1, 2013.~~

Sec. 1. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) A No person shall knowingly and unlawfully ~~possessing~~ possess
more than one ounce of marijuana or cultivate marijuana. For a first offense
under this subdivision (A), a person shall be afforded the opportunity to
participate in court diversion unless the prosecutor states on the record why a
referral to court diversion would not serve the ends of justice. A person
convicted of a first offense under this subdivision shall be imprisoned not more
than six months or fined not more than \$500.00, or both.

(B) A person convicted of a second or subsequent offense ~~under this~~
subdivision of knowingly and unlawfully possessing more than one ounce of
marijuana or cultivating marijuana shall be imprisoned not more than two
years or fined not more than \$2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under
this subdivision, the court may defer sentencing as provided in 13 V.S.A.

§ 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

(2) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of two ounces or more containing any of~~ marijuana or knowingly and unlawfully cultivating more than three plants of marijuana shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.

(3) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more containing any of~~ marijuana or knowingly and unlawfully cultivating more than 10 plants of marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of 10 pounds or more of marijuana or~~

knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

(5) Prior to accepting a plea of guilty or a plea of nolo contendere from a defendant charged with a violation of this subsection, the court shall address the defendant personally in open court, informing the defendant and determining that the defendant understands that admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to the charge may have collateral consequences such as loss of education financial aid, suspension or revocation of professional licenses, and restricted access to public benefits such as housing. If the court fails to provide the defendant with notice of collateral consequences in accordance with this subdivision and the defendant later at any time shows that the plea and conviction may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

(6) A person 21 years of age or older who smokes marijuana on a school bus while it is transporting minors, or within a school building, or on real property owned by a public or independent elementary or secondary

school or a career technical education center that is within 100 feet of a school building shall be subject to the penalties in subdivision (1) of this subsection.

* * *

(d) Only the portion of a marijuana-infused product that is attributable to marijuana shall count toward the possession limits of this section. The weight of marijuana that is attributable to marijuana-infused products shall be determined according to methods set forth in rule by the Department of Public Safety in accordance with chapter 86 of this title (therapeutic use of cannabis).

Sec. 2. 18 V.S.A. § 4230a is added to read:

§ 4230a. MARIJUANA POSSESSION BY A PERSON OVER 21 YEARS

OF AGE; CIVIL PENALTY

(a) No person shall knowingly and unlawfully possess marijuana. A person 21 years of age or older who violates this section shall be assessed a civil penalty of not more than \$300.00.

(b)(1) Except as otherwise provided in this section, a person who possesses marijuana in an amount less than the amount in subdivision 4230(a)(1) (criminal possession of marijuana) or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under state law.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind.

(c)(1) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.

(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and subject to seizure and forfeiture, unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).

(3) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.

(d) If a person suspected of violating this section contests the presence of cannabinoids within 10 days of receiving a civil citation, the person may request that the State Crime Laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the State shall reimburse the person at state expense.

(e)(1) Upon request by a law enforcement officer who reasonably suspects that a person has committed or is committing a violation of this section, the person shall give his or her name and address to the law enforcement officer and shall produce a Vermont operator's license, a Vermont identification card, a passport, or another suitable form of identification.

(2) A law enforcement officer is authorized to detain a person if:

(A) the officer has reasonable grounds to believe the person has violated this section; and

(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(3) The person may be detained only until the person identifies himself or herself satisfactorily to the officer. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a Criminal Division of the Superior Court judge for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

(f) Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be retained by the State for the funding of law enforcement officers on the Drug Task Force, except for a \$12.50 administrative charge for each violation which shall be retained by the State.

The remaining 50 percent shall be paid to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

Sec. 3. 18 V.S.A. § 4230b is added to read:

§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS
OF AGE; CIVIL PENALTY

(a) Offense. No person shall knowingly and unlawfully possess marijuana. A person under 21 years of age who violates this section commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, and a civil penalty of \$300.00 for a first or second offense and not more than \$1,000.00 for a third or subsequent offense.

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty and a 90-day suspension of the person's operator's license and may face substantially increased insurance rates;

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

(c) Summons and Complaint. When a person is issued a notice of violation under this section, the law enforcement officer shall complete a summons and complaint for the offense and send it to the Diversion Program in the county where the offense occurred. The summons and complaint shall not be filed with the Judicial Bureau at that time.

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who

issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, the person's driver's license will be suspended for 90 days, and the person's automobile insurance rates may increase substantially.

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense imposed by the Diversion Program,

no penalty shall be imposed and the person's operator's license shall not be suspended.

(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(2) Substance abuse screening required under this subsection shall be completed within 60 days after the Diversion Program receives a summons and complaint. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse

counseling, and any other condition related to the offense which the diversion program has imposed, the diversion program shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the Judicial Bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the Judicial Bureau under this subdivision, the Diversion Program shall redact all language containing the person's name, address, Social Security number, or any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program or if the person fails to pay the Diversion Program any required program fees, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the Diversion Program or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section.

Sec. 4. 23 V.S.A. § 1134 is amended to read:

**§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR
POSSESSION OF ALCOHOL**

(a) A person shall not consume alcoholic beverages or smoke marijuana while operating a motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

* * *

(d) A person who violates subsection (a) of this section shall be fined not more than \$500.00. A person who violates subsection (b) of this section shall

be fined not more than \$25.00. A person convicted and fined for an offense under subsection (a) of this section shall not be subject to prosecution for the same actions under subsection (b) of this section.

Sec. 5. 23 V.S.A. § 1134(a) is amended to read:

(a) A person shall not consume alcoholic beverages ~~or smoke marijuana~~ while operating a motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

Sec. 6. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

** * **

(b) The ~~judicial bureau~~ Judicial Bureau shall have jurisdiction of the following matters:

** * **

(24) Violations of 18 V.S.A. §§ 4230a and 4230b , relating to possession of marijuana.

** * **

Sec. 7. TASK FORCE

(a) Creation of task force. There is created a Task Force for the purpose of developing recommendations to the General Assembly to address drugged driving in Vermont and whether the penalties for possession of alcohol by a

person under 21 years of age should be the same as the penalties for possession of an ounce or less of marijuana by a person under 21 years of age as provided in this act.

(b) Membership. The Task Force shall be composed of four members as follows:

(1) the Commissioner of Public Safety or designee;

(2) the Commissioner of Health or designee;

(3) the Executive Director of State's Attorneys and Sheriffs or designee;

and

(4) the Defender General or designee.

(c) Report. By November 1, 2013, the Task Force shall report to the House and Senate Committees on Judiciary its findings and any recommendations for legislative action.

Sec. 8. EFFECTIVE DATES

(a) This section and Sec. 7 of this act shall take effect on passage.

(b) Sec. 5 of this act shall take effect on July 1, 2014.

(c) The remaining sections of this act shall take effect on July 1, 2013.