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H.72

Introduced by Representatives Small of Winooski, Berbeco of Winooski,  
Black of Essex, Bluemle of Burlington, Bos-Lun of  
Westminster, Brumsted of Shelburne, Christie of Hartford, Cina  
of Burlington, Dodge of Essex, Donnally of Hyde Park,  
Garofano of Essex, Goldman of Rockingham, Headrick of  
Burlington, Hooper of Randolph, Hyman of South Burlington,  
LaMont of Morristown, Leavitt of Grand Isle, Logan of  
Burlington, McGill of Bridport, Mulvaney-Stanak of  
Burlington, Pajala of Londonderry, Rachelson of Burlington,  
Rice of Dorset, Sims of Craftsbury, Stone of Burlington,  
Surprenant of Barnard, Templeman of Brownington, Torre of  
Moretown, and Troiano of Stannard

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

1 benchmarks for personal use dosage and personal use supply for regulated  
2 drugs; and require the Sentencing Commission to use benchmark  
3 recommendations from the Drug Use Standards Advisory Board to make  
4 recommendations regarding adjustments in the amounts for possession,  
5 dispensing, and sale of regulated drugs.

6 An act relating to a harm-reduction criminal justice response to drug use

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

8 ~~\*\*\* Safer Drug Consumption Programs \*\*\*~~

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

10 § 4254. IMMUNITY FROM LIABILITY

11 \* \* \*

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

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

16 (B) a staff member or administrator of a safer drug consumption

17 program, including a health care professional, manager, employee, or

18 volunteer, or

1 ~~(C) a property owner who owns real property at which a safer drug~~  
2 ~~consumption program is located and operates.~~

3 ~~(2) The immunity provisions of this section apply only to the use and~~  
4 ~~derivative use of evidence gained as a proximate result of participation in or~~  
5 ~~with a safer drug consumption program.~~

6 ~~(k) A safer drug consumption program:~~

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

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

12 ~~(3) answers questions on safe consumption practices;~~

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

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

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

19 ~~(7) provides overdose prevention education and access to or referrals to~~  
20 ~~obtain naloxone,~~

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

3 ~~(9) provides reasonable security of the program site;~~

4 ~~(10) establishes operating procedures for the program as well as~~  
5 ~~eligibility criteria for program participants; and~~

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

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

10 ~~(1) the number of program participants;~~

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

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

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

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

19 \* \* \* Repeal of Crack Statute \* \* \*

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

21 ~~§ 4231. COCAINE~~

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~~(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~~ not 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.

1 ~~(c)(1) The Board shall be convened and chaired by the Deputy~~  
2 Commissioner of Substance Use Programs. After receiving nominations from  
3 harm reduction service providers, the Deputy Commissioner shall appoint  
4 three consumer representatives to the Board who have lived experience in drug  
5 use and consumption practices. The Deputy Commissioner, after consulting  
6 with the three consumer representatives, shall strive for geographic diversity in  
7 appointing the remaining Board members as follows:

8 (A) two representatives from harm reduction service providers;

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

10 (C) an expert on human behavior and addiction;

11 (D) an expert on substance use disorder treatment;

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

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

15 and

16 (G) a representative of law enforcement.

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

19 (d) The Board shall have the administrative assistance of the Division of  
20 Substance Use Programs.

1 ~~(e) Members of the Board shall be entitled to per diems pursuant to~~  
2 ~~32 V.S.A. § 1010 for not more than three meetings to develop initial~~  
3 ~~recommendations required by subsection (f) of this section and once annually~~  
4 ~~thereafter.~~

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

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

10 (2) a recommendation as to whether 18 V.S.A. § 4233 (heroin) and  
11 18 V.S.A. § 4233a (fentanyl) should be combined into one statute.

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

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

21 ~~(i) As used in this section.~~



1 ~~(1) "Benchmark personal use dosage" means the quantity of a drug~~  
2 ~~commonly consumed over a 24-hour period for any therapeutic, medicinal, or~~  
3 ~~recreational purpose.~~

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

7 Sec. 5. SUNSET OF DRUG USE STANDARDS ADVISORY BOARD

8 13 V.S.A. § 5453 (Drug Use Standards Advisory Board) is repealed on  
9 July 1, 2028.

10 \* \* \* Effective Date \* \* \*

11 Sec. 6. EFFECTIVE DATE

12 ~~This act shall take effect on passage.~~

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

*§ 4254. IMMUNITY FROM LIABILITY; OVERDOSE PREVENTION*

*\* \* \**

*(j)(1) The following persons shall not be cited, arrested, or prosecuted for unlawful possession of a regulated drug in violation of this chapter or subject to the property forfeiture provisions of this chapter for participation in or with an overdose prevention center that has been approved pursuant to subsection (m) of this section and that is acting in the good faith provision of overdose*

prevention services in accordance with the guidelines established pursuant to subsection (l) of this section:

(A) a person using the services of an overdose prevention center;

(B) a staff member or administrator of an overdose prevention center, including a health care professional, manager, employee, or volunteer; or

(C) a property owner who owns real property at which an overdose prevention center is located and operates.

(2) The immunity provisions of this subsection apply only to the use and derivative use of evidence gained as a proximate result of participation in or with an overdose prevention center.

(k) An overdose prevention center:

(1) provides a space supervised by health care professionals or other trained staff where persons who use drugs can consume preobtained drugs and medication for substance use disorder;

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

(3) answers questions on safer 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;

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

(7) provides overdose prevention education and distributes overdose reversal medications, including 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.

(l) The Department of Health, in consultation with stakeholders and health departments of other states that have overdose prevention centers, shall develop operating guidelines for overdose prevention centers not later than April 1, 2025. The operating guidelines shall include the level of staff qualifications required for medical safety and treatment and referral support.

(m)(1) An entity may apply to the Department of Health for approval to operate an overdose prevention center. Entities may apply to establish and operate more than one program, and services may be provided at a fixed

location or a mobile unit, or both. A safe syringe program may apply to operate an overdose prevention center.

(2) If an applicant complies with all applicable laws, rules, and operating guidelines adopted pursuant to subsection (l) of this section, the application shall be approved within 45 days after receipt. If the application is denied, the applicant shall be provided with a written explanation of the basis for the denial and the steps necessary to remedy the application. The applicant may resubmit the application and the Department shall have 45 days to respond. Approval for a program shall be for a period of two years and may be renewed.

(n) An overdose prevention center shall be permitted to operate within a municipality only upon the affirmative vote of the legislative body of the municipality.

~~(m)~~(o) An entity operating an overdose prevention center shall make publicly available the following information annually on or before January 15:

(1) the number of program participants;

(2) deidentified demographic information of program participants;

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

(4) the number of times emergency medical services were contacted and responded for assistance;

(5) the number of times law enforcement were contacted and responded for assistance; and

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

Sec. 2. 18 V.S.A. § 4475(2) is amended to read:

(2) “Organized community-based needle exchange program” means a program approved by the Commissioner of Health under section 4478 of this title, the purpose of which is to provide access to clean needles and syringes; ~~and which is operated by an AIDS service organization, a substance abuse treatment provider, or a licensed health care provider or facility.~~ Such programs shall be operated in a manner that is consistent with the provisions of 10 V.S.A. chapter 159 (waste management; hazardous waste), and any other applicable laws.

Sec. 3. 18 V.S.A. § 4478 is amended to read:

§ 4478. NEEDLE EXCHANGE PROGRAMS

~~The Department of Health, in collaboration~~ consultation ~~with the statewide harm reduction coalition~~ community stakeholders, shall develop operating guidelines for needle exchange programs. If a program complies with such operating guidelines and with existing laws and regulations, it shall be approved by the Commissioner of Health. ~~Such operating guidelines shall be established no later than September 30, 1999.~~ A needle exchange program

may apply to be an overdose prevention center pursuant to section 4254 of this title.

*Sec. 4. 33 V.S.A. § 2004 is amended to read:*

*§ 2004. MANUFACTURER FEE*

*(a) Annually, each pharmaceutical manufacturer or labeler of prescription drugs that are paid for by the Department of Vermont Health Access for individuals participating in Medicaid, Dr. Dynasaur, or VPharm shall pay a fee to the Agency of Human Services. The fee shall be ~~1.75~~ 2.25 percent of the previous calendar year's prescription drug spending by the Department and shall be assessed based on manufacturer labeler codes as used in the Medicaid rebate program.*

*(b) Fees collected under this section shall fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632 and 4633; analysis of prescription drug data needed by the Office of the Attorney General for enforcement activities; the Vermont Prescription Monitoring System established in 18 V.S.A. chapter 84A; the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2; statewide unused prescription drug disposal initiatives; prevention of prescription drug misuse, abuse, and diversion; the Substance Misuse Prevention Oversight and Advisory Council established in 18 V.S.A. § 4803; treatment of substance use disorder; exploration of nonpharmacological*

*approaches to pain management; a hospital antimicrobial program for the purpose of reducing hospital-acquired infections; the purchase and distribution of fentanyl testing strips; the purchase and distribution of naloxone to emergency medical services personnel; ~~and~~ any opioid-antagonist education, training, and distribution program operated by the Department of Health or its agents; and grants to overdose prevention centers to address the harms of the opioid epidemic. The fees shall be collected in the Evidence-Based Education and Advertising Fund established in section 2004a of this title.*

*(c) The Secretary of Human Services or designee shall make rules for the implementation of this section.*

\* \* \*

*Sec. 5. 33 V.S.A. § 2004a is amended to read:*

*§ 2004a. EVIDENCE-BASED EDUCATION AND ADVERTISING FUND*

*(a) The Evidence-Based Education and Advertising Fund is established in the State Treasury as a special fund to be a source of financing for activities relating to fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632 and 4633; for analysis of prescription drug data needed by the Office of the Attorney General for enforcement activities; for the Vermont Prescription Monitoring System established in 18 V.S.A. chapter 84A; for the evidence-based education*

*program established in 18 V.S.A. chapter 91, subchapter 2; for statewide unused prescription drug disposal initiatives; for the prevention of prescription drug misuse, abuse, and diversion; for the Substance Misuse Prevention Oversight and Advisory Council established in 18 V.S.A. § 4803; for treatment of substance use disorder; for exploration of nonpharmacological approaches to pain management; for a hospital antimicrobial program for the purpose of reducing hospital-acquired infections; for the purchase and distribution of fentanyl testing strips; for the purchase and distribution of naloxone to emergency medical services personnel; ~~and~~ for the support of any opioid-antagonist education, training, and distribution program operated by the Department of Health or its agents; and grants to overdose prevention centers to address the harms of the opioid epidemic. Monies deposited into the Fund shall be used for the purposes described in this section.*

\* \* \*

*Sec. 6. PILOT PROGRAM; OVERDOSE PREVENTION CENTERS*

*In fiscal year 2025, ~~\$1,000,000.00~~ \$2,000,000.00 is authorized from the Evidence-Based Education and Advertising Fund pursuant to 33 V.S.A. § 2004a to the Department of Health for the purpose of awarding ~~one or more~~ grants for two fixed-site or mobile overdose prevention centers to applicants that demonstrate the ability to run such a program in accordance with the requirements of Sec. 1 of this act. The Department shall award grants based*



on an applicant's ability to establish such sites in accordance with guidelines established by the Department for overdose prevention centers.

*Sec. 7. STUDY; OVERDOSE PREVENTION CENTERS*

(a) On or before December 1, 2024, the Department of Health shall contract with a researcher or independent consulting entity with expertise in the field of rural addiction or overdose prevention centers, or both, to study the impact of overdose prevention center pilot programs authorized in Sec. 6 of this act in their respective communities. The study shall evaluate the current impacts of the overdose crisis in Vermont, as well as any changes up to four years following the implementation of the overdose prevention center pilot programs. The work of the researcher or independent consulting entity shall be governed by the following goals:

(1) the current state of the overdose crisis and deaths across the State of Vermont and the impact of overdose prevention center pilot programs on the overdose crisis and deaths across Vermont, with a focus on the communities where pilot programs are established;

(2) the current crime rates in communities where the overdose prevention center pilot programs will be established and the impact of overdose prevention center pilot programs on crime rates in communities where the overdose prevention center pilot programs are established;

(3) the current rates of syringe litter in communities where overdose prevention center pilot programs will be established and the impact of overdose prevention center pilot programs on the rates of syringe litter where overdose prevention center pilot programs are established;

(4) the current number of emergency medical services response calls related to overdoses across Vermont, with a focus on the communities where pilot programs will be established, and the impact of overdose prevention center pilot programs on the number of emergency response calls related to overdoses;

(5) the current rate of syringe service program participant uptake of treatment and recovery services and the impact of overdose prevention center pilot programs on the rates of participant uptake of treatment and recovery services; and

(6) the impact of overdose prevention center pilot programs on the number of emergency response calls related to overdoses across Vermont, with a focus on the communities where pilot programs are established.

(b) The Department of Health shall collaborate with the researcher or independent consulting agency to provide the General Assembly with interim annual reports on or before January 15 of each year with a final report containing the results of the study and any recommendations on or before January 15, 2029.

*Sec. 8. APPROPRIATION; STUDY; OVERDOSE PREVENTION*

*CENTERS*

*In fiscal year 2025, \$300,000.00 is appropriated to the Department of Health from the ~~General Fund~~ Opioid Abatement Special Fund for the purpose of funding the study of the impact of overdose prevention center pilot programs authorized in Sec. 7 of this act.*

*Sec. 9. EFFECTIVE DATE*

*This act shall take effect on ~~July 1, 2024~~ passage.*