

1 H.511

2 Introduced by Committee on Transportation

3 Date:

4 Subject: Motor vehicles; driving under the influence; open container; learner's
5 permits; seatbelts; incident clearance; liability

6 Statement of purpose of bill as introduced: This bill proposes to:

7 (1) subject a person who operates any vehicle the operation of which
8 requires a school bus endorsement to the 0.02 blood alcohol limit that applies
9 to persons operating a school bus;

10 (2) make Vermont's implied consent statute consistent with the U.S.
11 Supreme Court's decision in *Birchfield v. North Dakota* by providing that a
12 warrant is required before a blood test can be given to a person suspected of
13 DUI and that a person cannot be criminally prosecuted for refusing to submit
14 to the blood test;

15 (3) impose additional penalties for operating a vehicle under the
16 influence of alcohol or drugs with a minor in the vehicle;

17 (4) allow additional professionals to conduct an evidentiary blood draw,
18 and allow a medical facility or business to charge an agency not more than
19 \$75.00 for an evidentiary blood draw;

20 (5) prohibit operation of a motor vehicle while possessing or operating
21 under the influence of drugs for individuals under 21 years of age and

1 imposing civil penalties for such a violation;

2 (6) establish civil penalties for consuming marijuana or having an open
3 container of marijuana while in an operating motor vehicle;

4 (7) require that persons qualified to ride beside an individual operating a
5 motor vehicle under a learner's permit not be under the influence of alcohol or
6 drugs during such operation;

7 (8) eliminate the requirement that a person who violates the adult
8 seatbelt law be ticketed for the primary violation that gave rise to the traffic
9 stop; and

10 (9) make miscellaneous changes to a law governing the removal of
11 vehicles from a highway under specified circumstances.

An act relating to ~~highway safety~~ *eliminating penalties for possession of
limited amounts of marijuana by adults 21 years of age or older*

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

13 ~~*** Driving Under the Influence ***~~

14 Sec. 1. 23 V.S.A. § 1201(a) is amended to read:

15 (a) A person shall not operate, attempt to operate, or be in actual physical
16 control of any vehicle on a highway:

17 (1) when the person's alcohol concentration is 0.08 or more, or 0.02 or
18 ~~more if the person is operating a school bus as defined in subdivision 4(34) of~~

1 ~~this title vehicle when the operation requires an operator's license with a~~
2 school bus endorsement; or

3 * * *

4 Sec. 2. 23 V.S.A. § 1202 is amended to read:

5 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
6 ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

7 (a)(1) Implied consent. Every person who operates, attempts to operate, or
8 is in actual physical control of any vehicle on a highway in this State is
9 deemed to have given consent to an evidentiary test of that person's breath for
10 the purpose of determining the person's alcohol concentration or the presence
11 of other drug in the blood. The test shall be administered at the direction of a
12 law enforcement officer.

13 (2) Blood test. If breath testing equipment is not reasonably available or
14 if the officer has reason to believe that the person is unable to give a sufficient
15 sample of breath for testing or if the law enforcement officer has reasonable
16 grounds to believe that the person is under the influence of a drug other than
17 alcohol, the person is deemed to have given consent to the taking of an
18 evidentiary sample of blood. If in the officer's opinion the person is incapable
19 of decision or unconscious or dead, it is deemed that the person's consent is
20 given and a sample of blood shall be taken. A blood test sought pursuant to
21 this subdivision (2) shall be obtained pursuant to subsection (1) of this section.

1 ~~results of the evidentiary test. Once a law enforcement official begins the~~
2 application process for a search warrant, the law enforcement official is not
3 obligated to discontinue the process even if the person later agrees to provide
4 an evidentiary breath sample. The limitation created by Rule 41(g) of the
5 Vermont Rules of Criminal Procedure regarding blood specimens shall not
6 apply to search warrants authorized by this section.

7 * * *

8 Sec. 3. 23 V.S.A. § 1210(l) is added to read:

9 (l) Minor in vehicle. A person who violates section 1201 of this title while
10 a minor is in the person's vehicle shall, in addition to any other penalty
11 imposed by law, be:

12 (1) fined not more than \$300.00 or imprisoned for not more than six
13 months, or both; or

14 (2) fined not more than \$5,000.00 or imprisoned for not more than
15 10 years, or both, if the violation results in the death of or serious bodily injury
16 to the minor.

17 Sec. 4. 23 V.S.A. § 1203 is amended to read:

18 § 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND

19 VIDEOTAPE

20 (a) A breath test shall be administered only by a person who has been
21 ~~certified by the Vermont Criminal Justice Training Council to operate the~~

1 ~~breath testing equipment being employed. In any proceeding under this~~
2 subchapter, a person's testimony that he or she is certified to operate the breath
3 testing equipment employed shall be prima facie evidence of that fact.

4 (b) Only a physician, licensed nurse, medical technician, physician
5 assistant, medical technologist, ~~or~~ laboratory assistant, intermediate or
6 advanced emergency medical technician, or paramedic acting at the request of
7 a law enforcement officer may withdraw blood for the purpose of determining
8 the presence of alcohol or ~~either~~ another drug. This limitation does not apply
9 to the taking of a breath sample. A medical facility or business may charge an
10 agency not more than \$75.00 for an evidentiary blood draw when a person is
11 brought to a facility for the sole purpose of a blood test, or when an emergency
12 medical technician or paramedic draws an evidentiary blood sample.

13 * * *

14 Sec. 5. 23 V.S.A. § 1217 is added to read:

15 § 1217. PERSONS UNDER 21 YEARS OF AGE; OPERATING A
16 VEHICLE WHILE IN POSSESSION OR UNDER THE
17 INFLUENCE OF A DRUG; CIVIL PENALTIES

18 (a) A person under 21 years of age shall not operate, attempt to operate, or
19 be in actual physical control of a vehicle on a highway while:

20 (1) under the influence of a drug; or

21 ~~(2) in possession of a regulated drug as defined in 18 V.S.A. § 4201,~~

1 ~~unless the person obtained possession with a valid prescription or registration~~
2 ~~card, or the person is lawfully transporting or delivering the drug.~~

3 ~~(b) A violation of subsection (a) of this section shall be a civil offense~~
4 ~~subject to the jurisdiction of the Judicial Bureau and subject to the following~~
5 ~~sanctions:~~

6 ~~(1) For a first violation, the Commissioner shall suspend the person's~~
7 ~~license to operate a motor vehicle for a period of six months.~~

8 ~~(2) For a second or subsequent violation, the Commissioner shall~~
9 ~~suspend the person's license to operate a motor vehicle for a period of one year~~
10 ~~or until the person reaches 21 years of age, whichever is longer.~~

11 ~~(3) Any suspension imposed pursuant to this section shall run~~
12 ~~concurrently with any suspension imposed pursuant to section 1205, 1206,~~
13 ~~1208, or 1216 of this title, any suspension imposed by another jurisdiction~~
14 ~~under comparable statutes, or a suspension resulting from a conviction for a~~
15 ~~violation of section 1091 of this title if it arose from the same incident. A~~
16 ~~person shall receive credit for any elapsed period of a suspension served in~~
17 ~~Vermont against a later suspension imposed in Vermont.~~

18 ~~(c) No fine shall be imposed and no points shall be assessed for a violation~~
19 ~~of this section.~~

20 ~~(d) Any civil penalty imposed by this section shall not bar prosecution for~~
21 ~~any crime arising out of the same violation, including a prosecution under~~

1 ~~section 1201 of this title.~~

2 ~~(e) As used in subdivision (a) of this subsection, “under the influence of a~~
3 ~~drug” shall have the same meaning as in subsection 1201(h) of this title.~~

4 Sec. 6. 23 V.S.A. § 1134 is amended to read:

5 § 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR
6 POSSESSION OF ALCOHOL OR MARIJUANA

(a) A person shall not consume alcoholic beverages or marijuana while
operating a motor vehicle on a public highway. *As used in this subsection, the*
prohibition on consumption of marijuana by the operator shall extend to the
operator’s consumption of second-hand marijuana smoke in the vehicle as a
result of another person’s consumption of marijuana. As used in this section,
“alcoholic beverages” shall have the same meaning as “intoxicating liquor” as
defined in section 1200 of this title.

7 (b) A person operating a motor vehicle on a public highway shall not
8 possess any open container which contains alcoholic beverages or marijuana in
9 the passenger area of the motor vehicle.

10 (c) As used in this section, “passenger area” shall mean the area designed
11 to seat the operator and passengers while the motor vehicle is in operation and
12 any area that is readily accessible to the operator or passengers while in their
13 seating positions, including the glove compartment, unless the glove
14 ~~compartment is locked. In a motor vehicle that is not equipped with a trunk,~~

1 ~~the term shall exclude the area behind the last upright seat or any area not~~
2 normally occupied by the operator or passengers.

3 (d) A person who violates subsection (a) of this section shall be assessed a
4 civil penalty of not more than \$500.00. A person who violates subsection (b)
5 of this section shall be assessed a civil penalty of not more than ~~\$25.00~~ \$50.00.

6 A person adjudicated and assessed a civil penalty for an offense under
7 subsection (a) of this section shall not be subject to a civil violation for the
8 same actions under subsection (b) of this section.

9 Sec. 7. 23 V.S.A. § 1134a is amended to read:

10 § 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR
11 POSSESSION OF ALCOHOL OR MARIJUANA

12 (a) Except as provided in subsection (c) of this section, a passenger in a
13 motor vehicle shall not consume alcoholic beverages or marijuana or possess
14 any open container which contains alcoholic beverages or marijuana in the
15 passenger area of any motor vehicle on a public highway. As used in this
16 section, "alcoholic beverages" shall have the same meaning as "intoxicating
17 liquor" as defined in section 1200 of this title.

18 (b) As used in this section, "passenger area" shall mean the area designed
19 to seat the operator and passengers while the motor vehicle is in operation and
20 any area that is readily accessible to the operator or passengers while in their
21 ~~seating positions, including the glove compartment, unless the glove~~

1 ~~compartment is locked. In a motor vehicle that is not equipped with a trunk,~~
2 the term shall exclude the area behind the last upright seat or any area not
3 normally occupied by the operator or passengers.

4 (c) A person, other than the operator, may possess an open container which
5 contains alcoholic beverages in the passenger area of a motor vehicle designed,
6 maintained, or used primarily for the transportation of persons for
7 compensation or in the living quarters of a motor home or trailer coach.

8 (d) A person who violates this section shall be ~~fined~~ subject to a civil
9 penalty of not more than \$25.00 \$50.00.

10 * * * Learner's Permits; Supervision * * *

11 Sec. 8. 23 V.S.A. § 615(a)(1) is amended to read:

12 (a)(1)(A) An unlicensed person 15 years of age or older may operate a
13 motor vehicle if he or she possesses a valid learner's permit issued to him or
14 her by the Commissioner, or by another jurisdiction in accordance with section
15 208 of this title, and if one of the following persons who is not under the
16 influence of alcohol or drugs rides beside him or her:

17 (i) his or her licensed parent or guardian;

18 (ii) a licensed or certified driver education instructor;

19 (iii) a licensed examiner of the Department; or

20 (iv) a licensed person at least 25 years of age rides beside him

21 or her.

1 ~~(B) A person described under subdivisions (A)(i)–(iv) of this~~
2 ~~subdivision (1) who, while under the influence of alcohol or drugs, rides~~
3 ~~beside an individual whom the person knows to be unlicensed shall be subject~~
4 ~~to the same penalties as for a violation of subsection 1130(b) of this title. A~~
5 ~~holder of a learner's permit shall not be deemed to have violated this section if~~
6 ~~a person described under subdivisions (A)(i)–(iv) of this subdivision (1) rides~~
7 ~~beside him or her while the person is under the influence of alcohol or drugs.~~

8 (C) Nothing in this section shall be construed to permit a person
9 against whom a revocation or suspension of license is in force, or a person
10 younger than 15 years of age, or a person who has been refused a license by
11 the Commissioner to operate a motor vehicle.

12 * * * Seat Belts * * *

13 Sec. 9. 23 V.S.A. § 1259 is amended to read:

14 § 1259. SAFETY BELTS; PERSONS 18 YEARS OF AGE 18 OR OVER
15 OLDER

16 * * *

17 (e) This section may be enforced only if a law enforcement officer has
18 detained the operator of a motor vehicle for another suspected traffic violation.
19 An operator shall not be subject to the penalty established in this section unless
20 the operator is required to pay a penalty for the primary violation.

21 (f) The penalty for violation of this section shall be as follows:

22 ~~(1) \$25.00 for a first violation,~~

1 ~~(2) \$50.00 for a second violation;~~

2 (3) \$100.00 for third and subsequent violations.

3 * * * Incident Clearance; Duties; Limitation on Liability * * *

4 Sec. 10. 23 V.S.A. § 1102 is amended to read:

5 § 1102. REMOVAL OF STOPPED VEHICLES

6 (a) ~~Any Subject to subsection (c) of this section,~~ any enforcement officer is
7 authorized to:

8 (1) ~~move~~ cause the removal of a vehicle stopped, parked, or standing
9 contrary to section 1101 of this title, or ~~to~~ require the driver or other person in
10 charge to move the vehicle to a safe position off the ~~paved or~~ main-traveled
11 part of the highway;

12 (2) ~~remove~~ cause the removal of an unattended vehicle ~~which~~ or cargo
13 that is an obstruction to traffic or to maintenance of the highway to a garage or
14 other place of safety;

15 (3) ~~remove~~ cause the removal of any vehicle found upon a highway, as
16 defined in 19 V.S.A. § 1, to a garage or other place of safety when:

17 (A) the officer is informed by a reliable source that the vehicle has
18 been stolen or taken without the consent of its owner; or

19 (B) the person in charge of the vehicle is unable to provide for its
20 removal; or

21 ~~(C) the person in charge of the vehicle has been arrested under~~

1 ~~circumstances which that require his or her immediate removal from control of~~
2 ~~the vehicle.~~

3 ~~(b) In the case of a crash involving a serious bodily injury or fatality,~~
4 ~~clearance of the crash scene may be delayed until the crash investigation is~~
5 ~~completed.~~

6 ~~(c) A towing operator shall undertake removal of a vehicle or cargo under~~
7 ~~this section only if summoned to the scene by the vehicle owner or vehicle~~
8 ~~operator, or an enforcement officer, and is authorized to perform the removal~~
9 ~~as follows:~~

10 ~~(1) The owner or operator of the vehicle or cargo being removed shall~~
11 ~~summon to the scene the towing operator of the owner's or operator's choice~~
12 ~~in consultation with the enforcement officer, and designate the location where~~
13 ~~the vehicle or cargo is to be removed.~~

14 ~~(2) The provisions of subdivision (1) of this subsection shall not apply~~
15 ~~when the owner or operator is incapacitated or otherwise unable to summon a~~
16 ~~towing operator, does not make a timely choice of a towing operator, or defers~~
17 ~~to the enforcement officer's selection of the towing operator.~~

18 ~~(3) The authority provided to the owner or operator under subdivision~~
19 ~~(1) of this subsection may be superseded by the enforcement officer if the~~
20 ~~towing operator of choice cannot respond to the scene in a timely fashion and~~
21 ~~the vehicle or cargo is a hazard, impedes the flow of traffic, or may not legally~~

1 ~~remain in its location in the opinion of the enforcement officer.~~

2 ~~(d)(1) Except as provided in subdivision (2) of this subsection, the vehicle~~
3 ~~owner and the motor carrier, if any, shall be responsible to the law~~
4 ~~enforcement agency or towing operator for reasonable costs incurred solely in~~
5 ~~the removal and subsequent disposition of the vehicle or cargo under this~~
6 ~~section.~~

7 ~~(2) When applicable, the provisions of 10 V.S.A. § 6615 (liability for~~
8 ~~release of hazardous materials) shall apply in lieu of this subsection.~~

9 ~~(e) Except for intentionally inflicted damage or gross negligence, a person~~
10 ~~who moves a vehicle or cargo or causes a vehicle or cargo to be moved in~~
11 ~~accordance with this section shall not be liable for damage incurred during the~~
12 ~~move.~~

(e) Except for intentionally inflicted damage or gross negligence, an
enforcement officer or a person acting at the direction of an enforcement
officer who removes from a highway a motor vehicle or cargo that is
obstructing traffic or maintenance activities or creating a hazard to traffic
shall not be liable for damage to the vehicle or cargo incurred during the
removal.

13 (f) Any enforcement officer causing the removal of a motor vehicle under
14 this section shall notify the Department as to the location and date of discovery
15 of the vehicle, date of removal of the vehicle, name of the towing service

1 ~~removing the vehicle, and place of storage. The officer shall record and~~
2 ~~remove from the vehicle, if possible, any information which that might aid the~~
3 ~~Department in ascertaining the ownership of the vehicle and forward it the~~
4 ~~information to the Department. A motor vehicle towed under authority of this~~
5 ~~section may qualify as an abandoned motor vehicle under subchapter 7 of~~
6 ~~chapter 21 of this title.~~

7 * * * Effective Dates * * *

8 Sec. 11. EFFECTIVE DATES

9 (a) This section and Secs. 1 (operating under the influence), 2 (implied
10 consent), 3 (DUI penalties), 6–7 (open container; marijuana), 8 (learner’s
11 permits; supervision), and 10 (incident clearance) shall take effect on passage.

12 (b) Secs. 4 (evidentiary blood draws), 5 (under age 21; possession of
13 consumption of drugs), and 9 (seatbelts) shall take effect on July 1, 2017.

Sec. 1. LEGISLATIVE INTENT; CIVIL AND CRIMINAL PENALTIES

It is the intent of the General Assembly to eliminate all penalties for
possession of one ounce or less of marijuana and two mature and four
immature marijuana plants for a person who is 21 years of age or older while
retaining criminal penalties for possession, dispensing, and sale of larger
amounts of marijuana.

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

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

* * *

~~(15)(A) “Marijuana” means any plant material of the genus cannabis or any preparation, compound, or mixture thereof except:~~

~~(A) sterilized seeds of the plant;~~

~~(B) fiber produced from the stalks; or~~

~~(C) hemp or hemp products, as defined in 6 V.S.A. § 562 all parts of the plant *Cannabis sativa* L., except as provided by subdivision (B) of this subdivision (15), whether growing or harvested, and includes:~~

~~(i) the seeds of the plant;~~

~~(ii) the resin extracted from any part of the plant; and~~

~~(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.~~

~~(B) “Marijuana” does not include:~~

~~(i) the mature stalks of the plant and fiber produced from the stalks;~~

~~(ii) oil or cake made from the seeds of the plant;~~

~~(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;~~

~~(iv) the sterilized seed of the plant that is incapable of germination; or~~

(v) hemp or hemp products, as defined in 6 V.S.A. § 562.

* * *

(43) “Immature marijuana plant” means a female marijuana plant that has not flowered and that does not have buds that may be observed by visual examination.

(44) “Mature marijuana plant” means a female marijuana plant that has flowered and that has buds that may be observed by visual examination.

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

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate more than two mature marijuana plants or four immature marijuana plants. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program 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 of knowingly and unlawfully possessing more than one ounce of marijuana or

more than five grams of hashish or cultivating more than two mature marijuana plants or four immature marijuana plants 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 two ounces of marijuana or 10 grams of hashish or knowingly and unlawfully cultivating more than three plants of four mature marijuana plants or eight immature marijuana plants 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 more than one pound or more of marijuana or more than 2.8 ounces or more of hashish or knowingly and unlawfully cultivating more than 10 plants of six mature marijuana plants or 12 immature marijuana plants shall be imprisoned not more than five years or fined not more than ~~\$100,000.00~~ \$10,000.00, or both.

(4) A person knowingly and unlawfully possessing more than 10 pounds or more of marijuana or more than one pound or more of hashish or knowingly and unlawfully cultivating more than 25 plants of 12 mature marijuana plants or 24 immature marijuana plants shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

(5) If a court fails to provide the defendant with notice of collateral consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection 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) The amounts of marijuana in this subsection shall not include marijuana cultivated, harvested, and stored in accordance with section 4230e of this title.

* * *

Sec. 4. 18 V.S.A. § 4230a is amended to read:

*§ 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE
OR OLDER; CIVIL VIOLATION*

(a)(1) ~~A person 21 years of age or older who knowingly and unlawfully~~

~~possesses one ounce or less of marijuana or five grams or less of hashish
commits a civil violation and shall be assessed a civil penalty as follows:~~

~~(1) not more than \$200.00 for a first offense;~~

~~(2) not more than \$300.00 for a second offense;~~

~~(3) not more than \$500.00 for a third or subsequent offense.~~

~~(b)(1) Except as otherwise provided in this section, a person 21 years of
age or older who possesses one ounce or less of marijuana or five grams or
less of hashish and two mature marijuana plants or fewer or four immature
marijuana plants or fewer 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. The
one-ounce limit of marijuana or five grams of hashish that may be possessed
by a person 21 years of age or older shall not include marijuana cultivated,
harvested, and stored in accordance with section 4230e of this title.~~

~~(2)(A) A violation of this section shall not result in the creation of a
criminal history record of any kind A person shall not consume marijuana in a
public place. "Public place" means any street, alley, park, sidewalk, public
building other than individual dwellings, any place of public accommodation
as defined in 9 V.S.A. § 4501, and any place where the use or possession of a
lighted tobacco product, tobacco product, or tobacco substitute as defined in
7 V.S.A. § 1001 is prohibited by law.~~

(B) A person who violates this subdivision (a)(2) shall be assessed a civil penalty as follows:

(i) not more than \$100.00 for a first offense;

(ii) not more than \$200.00 for a second offense; and

(iii) not more than \$500.00 for a third or subsequent offense.

~~(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)(b)(1) 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 possessed or consumed in violation of State law is contraband pursuant to section 4242 subsection 4242(d) 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~~

(2) This section does not:

(A) exempt a person from arrest, citation, or prosecution for being under the influence of marijuana while operating a vehicle of any kind or for consuming marijuana while operating a motor vehicle;

(B) repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana or for consuming marijuana while operating a motor vehicle;

(C) limit the authority of primary and secondary schools to impose administrative penalties for the possession of marijuana on school property;

(D) prohibit a municipality from adopting a civil ordinance to provide additional penalties for consumption of marijuana in a public place;

(E) prohibit a landlord from banning possession or use of marijuana in a lease agreement; or

(F) allow an inmate of a correctional facility to possess or use marijuana or to limit the authority of law enforcement, the courts, the Department of Corrections, or the Parole Board to impose penalties on offenders who use marijuana in violation of a court order, conditions of furlough, parole, or rules of a correctional facility.

~~(e)~~(c)(1) *A law enforcement officer is authorized to detain a person if:*

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

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

(2) The person may be detained only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court 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)~~(d) *Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be deposited in the Drug Task Force Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Department of Public Safety 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 deposited in the Court Technology Special Fund, in accordance with 13 V.S.A. § 7252. The remaining 50 percent shall be deposited in the Youth Substance Abuse Safety Program Special Fund, hereby created to be managed pursuant to 32 V.S.A.*

chapter 7, subchapter 5, and available to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

(e) Nothing in this section shall be construed to do any of the following:

(1) require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace;

(2) prevent an employer from adopting a policy that prohibits the use of marijuana in the workplace;

(3) create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees; or

(4) prevent an employer from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises.

Sec. 5. 18 V.S.A. § 4230b is amended to read:

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

(a) Offense. A person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish or two mature marijuana plants or fewer or four immature marijuana plants or

fewer 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:

(1) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 30 days, for a first offense; and

(2) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a second or subsequent offense.

* * *

Sec. 6. REPEAL

18 V.S.A. § 4230d (marijuana possession by a person under 16 years of age; delinquency) is repealed.

Sec. 7. 18 V.S.A. § 4230e is added to read:

§ 4230e. CULTIVATION OF MARIJUANA BY A PERSON 21 YEARS OF

AGE OR OLDER

(a)(1) Except as otherwise provided in this section, a person 21 years of age or older who cultivates no more than two mature marijuana plants and four immature marijuana plants 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) Each dwelling unit shall be limited to two mature marijuana plants and four immature marijuana plants regardless of how many persons 21 years of age or older reside in the dwelling unit. As used in this section, "dwelling unit" means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.

(3) Any marijuana harvested from the plants allowed pursuant to this subsection shall not count toward the one-ounce possession limit in section 4230a of this title provided it is stored in an indoor facility on the property where the marijuana was cultivated and reasonable precautions are taken to prevent unauthorized access to the marijuana.

(4) Cultivation in excess of the limits provided in this subsection shall be punished in accordance with section 4230 of this title.

(b)(1) Personal cultivation of marijuana only shall occur:

(A) on property lawfully in possession of the cultivator or with the written consent of the person in lawful possession of the property; and

(B) in an enclosure that is screened from public view and is secure so that access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

(2) A person who violates this subsection shall be assessed a civil

penalty as follows:

(A) not more than \$100.00 for a first offense;

(B) not more than \$200.00 for a second offense; and

(C) not more than \$500.00 for a third or subsequent offense.

Sec. 8. 18 V.S.A. § 4230f is added to read:

§ 4230f. DISPENSING MARIJUANA TO A PERSON UNDER

21 YEARS OF AGE; CRIMINAL OFFENSE

(a) No person shall:

(1) dispense marijuana to a person under 21 years of age; or

(2) knowingly enable the consumption of marijuana by a person under

21 years of age.

(b) As used in this section, “enable the consumption of marijuana” means creating a direct and immediate opportunity for a person to consume marijuana.

(c) Except as provided in subsection (d) of this section, a person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(d) A person who violates subsection (a) of this section, where the person under 21 years of age while operating a motor vehicle on a public highway causes death or serious bodily injury to himself or herself or to another person as a result of the violation, shall be imprisoned not more than five years or

fined not more than \$10,000.00, or both.

(e)(1) Subsections (a)–(d) of this section shall not apply to a person under 21 years of age who dispenses marijuana to a person under 21 years of age or who knowingly enables the consumption of marijuana by a person under 21 years of age.

(2) A person who is 18, 19, or 20 years of age who knowingly dispenses marijuana to a person who is 18, 19, or 20 years of age 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 in accordance with the provisions of section 4230b of this title and shall be subject to the penalties in that section for failure to complete the program successfully.

(3) A person 18, 19, or 20 years of age who knowingly dispenses to a person under 18 years of age who is at least three years that person's junior shall be sentenced to a term of imprisonment of not more than five years in accordance with section 4237 of this title.

(4) A person who is 19 years of age who knowingly dispenses to a person 17 years of age or a person who is 18 years of age who knowingly dispenses marijuana to a person who is 16 or 17 years of age commits a misdemeanor crime and shall be fined not more than \$500.00.

(5) A person who is under 18 years of age who knowingly dispenses marijuana to another person who is under 18 years of age commits a

delinquent act and shall be subject to 33 V.S.A. chapter 52.

(f) This section shall not apply to a dispensary that lawfully provides marijuana to a registered patient or caregiver pursuant to chapter 86 of this title.

(g) The provisions of this section do not limit or restrict the prosecution for other offenses arising out of the same conduct, nor shall they limit or restrict defenses under common law.

Sec. 9. 18 V.S.A. § 4230g is added to read:

§ 4230g. DISPENSING MARIJUANA TO A PERSON UNDER

21 YEARS OF AGE; CIVIL ACTION FOR DAMAGES

(a) A spouse, child, guardian, employer, or other person who is injured in person, property, or means of support by a person under 21 years of age who is impaired by marijuana, or in consequence of the impairment by marijuana of any person under 21 years of age, shall have a right of action in his or her own name, jointly or severally, against any person or persons who have caused in whole or in part such impairment by knowingly dispensing marijuana to a person under 21 years of age or enabling the consumption of marijuana by a person under 21 years of age.

(b) Upon the death of either party, the action and right of action shall survive to or against the party's executor or administrator. The party injured or his or her legal representatives may bring either a joint action against the

impaired person under 21 years of age and the person or persons who knowingly dispensed the marijuana or enabled the consumption of the marijuana, or a separate action against either or any of them.

(c) An action to recover for damages under this section shall be commenced within two years after the cause of action accrues, and not after.

(d) In an action brought under this section, evidence of responsible actions taken or not taken is admissible if otherwise relevant.

(e) A defendant in an action brought under this section has a right of contribution from any other responsible person or persons, which may be enforced in a separate action brought for that purpose.

(f) A person who knowingly dispenses marijuana to a person under 21 years of age or who enables consumption of marijuana by a person under 21 years of age may be held liable under this section if the person knew, or a reasonable person in the same circumstances would have known, that the person who received the marijuana was under 21 years of age.

Sec. 10. 18 V.S.A. § 4230h is added to read:

§ 4230h. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE

PROHIBITED

(a) No person shall manufacture concentrated marijuana by chemical extraction or chemical synthesis using butane or hexane unless authorized as a dispensary pursuant to a registration issued by the Department of Public

Safety pursuant to chapter 86 of this title.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. A person who violates subsection (a) of this section and causes serious bodily injury to another person shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

Sec. 11. 18 V.S.A. § 4230i is added to read:

§ 4230i. EXCEPTIONS

(a) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2018 and who possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:

(1) not more than \$200.00 for a first offense;

(2) not more than \$300.00 for a second offense;

(3) not more than \$500.00 for a third or subsequent offense.

(b) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2018 and who possesses any of the following commits a

misdemeanor and is subject to imprisonment of not more than one year or a fine of not more than \$1,000.00, or both:

(1) more than one ounce, but not more than two ounces of marijuana;

(2) more than five grams, but not more than 10 grams of hashish; or

(3) not more than six mature marijuana plants and 12 immature marijuana plants.

Sec. 12. 18 V.S.A. § 4476 is amended to read:

§ 4476. OFFENSES AND PENALTIES

~~*(a) No person shall sell, possess with intent to sell, or manufacture with intent to sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a regulated drug in violation of chapter 84 of this title. Whoever violates any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000.00, or both.*~~

~~*(b) Any A person who violates subsection (a) of this section by selling sells drug paraphernalia to a person under 18 years of age shall be imprisoned for not more than two years or fined not more than \$2,000.00, or both.*~~

~~*(e)(b) The distribution and possession of needles and syringes as part of an*~~

organized community-based needle exchange program shall not be a violation of this section or of chapter 84 of this title.

Sec. 13. 23 V.S.A. § 1134 is amended to read:

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

(a) A person shall not consume an alcoholic beverages beverage or marijuana while operating a motor vehicle on a public highway. As used in this subsection, the prohibition on consumption of marijuana by the operator shall extend to the operator's consumption of secondhand marijuana smoke in the vehicle as a result of another person's consumption of marijuana. ~~As used in this section, "alcoholic beverages" shall have the same meaning as "alcohol" as defined in section 1200 of this title.~~

(b) A person operating a motor vehicle on a public highway shall not possess any open container which contains an alcoholic beverages beverage or marijuana in the passenger area of the motor vehicle.

(c) As used in this section,:

(1) "Alcoholic beverage" shall have the same meaning as "alcohol" as defined in section 1200 of this title.

(2) "~~passenger~~ Passenger area" shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating

positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be assessed a civil penalty of not more than \$500.00. A person who ~~violates~~ possesses an open container which contains an alcoholic beverage in violation of subsection (b) of this section shall be assessed a civil penalty of not more than \$25.00. A person who possesses an open container which contains marijuana in violation of subsection (b) of this section shall be assessed a civil penalty of not more than \$200.00. A person adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to a civil violation for the same actions under subsection (b) of this section.

Sec. 14. 23 V.S.A. § 1134a is amended to read:

§ 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR

POSSESSION OF ALCOHOL OR MARIJUANA

(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume an alcoholic beverages beverage or marijuana ~~or possess any open container which contains alcoholic beverages~~ in the passenger area of any motor vehicle on a public highway. ~~As used in this section, “alcoholic beverages” shall have the same meaning as “alcohol”~~

~~as defined in section 1200 of this title.~~

~~(b) A passenger in a motor vehicle shall not possess any open container which contains an alcoholic beverage or marijuana in the passenger area of the motor vehicle.~~

~~(c) As used in this section,:~~

~~(1) “Alcoholic beverage” shall have the same meaning as “alcohol” as defined in section 1200 of this title.~~

~~(2) “~~passenger~~ Passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.~~

~~(~~e~~)(d) A person, other than the operator, may possess an open container which contains an alcoholic beverages beverage in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.~~

~~(~~d~~)(e) A person who violates consumes an alcoholic beverage or possesses an open container which contains an alcoholic beverage in violation of this~~

~~section shall be fined assessed a civil penalty of not more than \$25.00.~~
~~A person who consumes marijuana or possesses an open container which contains marijuana in violation of this section shall be assessed a civil penalty of not more than \$200.00.~~

Sec. 15. 23 V.S.A. § 1134b is amended to read:

§ 1134b. SMOKING USING TOBACCO OR MARIJUANA IN A MOTOR VEHICLE WITH CHILD PRESENT

(a) A person shall not possess a lighted tobacco product or use a tobacco substitute as defined in 7 V.S.A. § 1001 in a motor vehicle that is occupied by a child required to be properly restrained in a federally approved child passenger restraining system pursuant to subdivision 1258(a)(1) or (2) of this title.

(b) A person shall not use marijuana as defined in 18 V.S.A. § 4201 in a motor vehicle that is occupied by a child under 18 years of age.

(c)(1) A person who violates subsection (a) of this section shall be subject to a ~~fine~~ civil penalty of not more than \$100.00.—~~No~~ and no points shall be assessed for a violation of this section.

(2) A person who violates subsection (b) of this section commits a misdemeanor crime and shall be subject to the following penalties:

(A) a fine of not more than \$500.00 for a first offense;

(B) a fine of not more than \$750.00 for a second offense;

(C) a fine of not more than \$1,000.00 for a third or subsequent offense.

(3) A person who violates subsection (b) of this section shall be assessed two points.

Sec. 16. 33 V.S.A. § 3504 is amended to read:

§ 3504. MARIJUANA AND TOBACCO USE PROHIBITED AT CHILD

CARE FACILITIES

(a) No person shall be permitted to use marijuana as defined in 18 V.S.A. § 4201 or to cultivate marijuana, or use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time.

(b) No person shall be permitted to use marijuana as defined in 18 V.S.A. § 4201, tobacco products, or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both ~~indoor~~ indoors and in any outdoor area designated for child care, of a licensed or registered family child care home while children are present and in care. If use of marijuana or smoking of tobacco products or tobacco substitutes occurs on the premises during other times, the family child care home shall notify prospective families prior to enrolling a child in the family child care home that their child will be exposed to an environment in which marijuana, tobacco products, or tobacco substitutes, ~~or both,~~ are used. Cultivation of marijuana in a licensed or registered family child care home is

not permitted.

(c) A person who knowingly uses or cultivates marijuana in violation of this section commits a misdemeanor crime and shall be subject to the following penalties:

(1) a fine of not more than \$500.00 for a first offense;

(2) a fine of not more than \$750.00 for a second offense;

(3) a fine of not more than \$1,000.00 for a third or subsequent offense.

Sec. 17. DISPARITIES IN ENFORCEMENT OF DRUG LAWS;

MARIJUANA REGULATORY COMMISSION

(a) Findings. The General Assembly finds that:

(1) A 2013 report by the American Civil Liberties Union, *The War on Marijuana in Black and White*, identified Vermont as 15th in the country and first in New England when comparing discrepancies in citation and arrest rates for marijuana possession. The report stated that African-Americans in Vermont were 4.36 times more likely to be cited or arrested for marijuana possession than whites, higher than the national average of African-Americans being 3.73 more likely than whites to be cited or arrested for marijuana possession. Although Vermont later decriminalized possession of small amounts of marijuana, a 2016 report by Human Rights Watch and the ACLU, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, found that Vermont had the third-highest racial disparity in drug

possession arrest rates in the country despite nearly identical use rates.

(2) In the report, *Driving While Black or Brown in Vermont*, University of Vermont researchers, examining 2015 data from 29 police agencies covering 78 percent of Vermont's population, found significant disparities in how often African-Americans and Hispanics are stopped, searched, and arrested, as compared to whites and Asians. According to the report, African-American drivers are four times more likely than white drivers to be searched by Vermont police, even though they are less likely to be found with illegal items.

(3) As part of efforts to eliminate implicit bias in Vermont's criminal justice system, policymakers must reexamine the State's drug laws, beginning with its policy on marijuana.

(4) According to a 2014 study conducted by the RAND Corporation, an estimated 80,000 Vermont residents regularly consume marijuana. Except for patients on the Vermont Medical Marijuana Registry, these Vermonters obtain marijuana through a thriving illegal market.

(5) In November 2016, voters in Massachusetts and Maine approved possession and cultivation of marijuana for personal use by adults 21 years of age or older. In July 2018, both states will begin to allow retail sales of marijuana and marijuana-infused products through licensed stores. Canada is expected to act favorably on legislation legalizing marijuana possession and cultivation for adults 18 years of age or older and federal administration

officials have cited the summer of 2018 as the date at which licensed retail stores will begin selling marijuana and marijuana-infused products to the public.

(6) By adopting a comprehensive regulatory structure for legalizing and licensing the marijuana market, Vermont can revise drug laws that have a disparate impact on racial minorities, help prevent access to marijuana by youths, better control the safety and quality of marijuana being consumed by Vermonters, substantially reduce the illegal marijuana market, and use revenues to support substance use prevention and education and enforcement of impaired driving laws. The Governor's Marijuana Advisory Commission, as provided in Executive Order No. 15-17, has been directed to report on such a system on or before December 15, 2018.

~~(b) Creation. There is created the Marijuana Regulatory Commission.~~

(c) Membership. The Commission shall be composed of the following 14 members:

(1) two current members of the House of Representatives who shall be appointed by the Speaker of the House,

(2) two current members of the Senate who shall be appointed by the Committee on Committees;

(3) a member appointed by the Speaker of the House;

~~(4) a member appointed by the Committee on Committees,~~

(5) the Commissioner of Public Safety or designee;

(6) the Commissioner of Health or designee;

(7) the Commissioner of Taxes or designee;

(8) the Secretary of Commerce and Community Development or designee;

(9) the Secretary of Agriculture, Food and Markets or designee;

(10) one member appointed by the Governor;

(11) the Attorney General or designee; and

(12) the Defender General or designee.

(d) Powers and duties. The Commission shall issue a report of its findings and recommendations and develop legislation that establishes a comprehensive regulatory and revenue system for an adult-use marijuana market that, when compared to the current illegal marijuana market, increases public safety and reduces harm to public health, and results in net revenue to the State.

(e) Best practices. The Commission shall examine best practices for addressing:

(1) impaired driving, including consideration of a regional impairment threshold for the New England states and parity in impaired driving laws and penalties;

(2) prevention and education related to marijuana use, access to marijuana by persons under 21 years of age, impacts to public health, and

~~consumer safety issues such as use of pesticides, GMOs, and testing of marijuana in a regulated market;~~

~~(3) regulation and taxation of a commercial adult-use marijuana market that is economically sustainable, reduces the illegal marijuana market, results in net revenues to the State after appropriate costs for education, public health and public safety have been deducted; and~~

~~(4) liability issues, including consideration of federal law, banking, landlords, and insurance.~~

~~(f) Subcommittees. The Commission may establish subcommittees for the purpose of carrying out its charge and may consult with stakeholders and interested parties, as appropriate.~~

~~(g) Assistance. The Commission shall have the administrative, technical, and legal assistance of the Office of the Governor, the Secretary of Administration, and relevant administrative agencies and departments. The Office of Legislative Council shall provide legal assistance to the legislative members of the Commission and drafting services to the entire Commission for the purpose of developing the legislation required by subsection (d) of this section.~~

~~(h) Report and legislation.~~

~~(1) On or before January 15, 2018, the Commission shall provide the General Assembly and the Governor with an interim report and recommended~~

legislation that shall address at a minimum:

(A) public safety recommendations to address impaired driving;

(B) requirements and funding for statewide evidence-based youth prevention programs;

(C) any recommended changes to the civil action for damages established in 18 V.S.A. § 4230g; and

(D) any recommended changes to the definitions of “open container” and “passenger area” as used in 23 V.S.A. §§ 1134 and 1134a.

(2) On or before December 31, 2018, the Commission shall provide the General Assembly and the Governor with its final report and recommended legislation on implementing and operating a comprehensive regulatory and revenue system for an adult marijuana market.

(i) Meetings.

(1) The Governor shall call the first meeting of the Commission to occur on or before August 1, 2017.

(2) The Commission shall elect a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Commission shall cease to exist on March 15, 2019.

(j) Reimbursement.

(1) For attendance at meetings during adjournment of the General

~~Assembly legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than six meetings.~~

~~(2) Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.~~

Sec. 18. EFFECTIVE DATES

This section and Sec. 17 shall take effect on passage and the remaining sections shall take effect on July 1, 2018.