

1 S.58

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: February 2, 2023

5 Subject: Regulated drugs; fentanyl; second and subsequent offenses; selling or
6 dispensing a regulated drug with death resulting

7 Statement of purpose of bill as introduced: This bill proposes to amend the
8 definition of knowingly for purposes of liability in drug offenses; increase
9 penalties for second and subsequent offenses for trafficking; in a prosecution
10 for dispensing or selling a regulated drug with death resulting, prohibit using
11 the fact that a substance contained more than one regulated drug from being a
12 defense if the proximate cause of death is the use of the dispensed or sold
13 substance containing more than one regulated drug; and require that the
14 mandatory minimum sentences for subsequent trafficking offenses and
15 dispensing or sale of a regulated drug with death resulting be served unless the
16 court makes written findings on the record that such an alternative sentence
17 will serve the interests of justice.

18 ~~An act relating to increasing the penalties for subsequent offenses for~~
19 ~~trafficking and dispensing or sale of a regulated drug with death resulting~~

An act relating to public safety

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

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

3 § 4201. DEFINITIONS

4 * * *

5 (45) "Fentanyl" means fentanyl or any compound, mixture, or
6 preparation including salts, isomers, or salts of isomers containing fentanyl or
7 fentanyl-related substances as defined by rule in accordance with this chapter.

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

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

15 § 4238. SECOND AND SUBSEQUENT OFFENSES

16 (a) Penalty. A Except as provided in subsection (b) of this section, a
17 person convicted of a second or subsequent offense of violating section 4228,
18 4230, 4231, 4232, 4233, 4234, 4235, 4236 or 4237 of this title, except a
19 violation of subdivision 4230(a)(1), or a comparable offense in another
20 jurisdiction of the United States, shall be subject to a term of imprisonment or
21 fined up to twice that authorized by those sections, or both.

1 ~~(b) Trafficking~~

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

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

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

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

19 § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH

20 ~~DEATH RESULTING~~

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

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

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

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

1 ~~Sec. 4. EFFECTIVE DATE~~

2 ~~This act shall take effect on July 1, 2023.~~

**** Big 12 Juvenile Offenses ****

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

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

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

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

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

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

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

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

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

(iii) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3), or an attempt to commit that offense.

* * *

Sec. 2. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

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

* * *

(10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2) or an attempt to commit that offense; or

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a or an attempt to commit either of those offenses; ~~or~~

~~(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(e) or an attempt to commit that offense.~~

* * *

* * * Raise the Age * * *

Sec. 3. 2018 Acts and Resolves No. 201, Secs. 17–19, are amended to read:

Sec. 17. [Deleted.]

Sec. 18. [Deleted.]

Sec. 19. [Deleted.]

Sec. 4. 2018 Acts and Resolves No. 201, Sec. 21, as amended by 2022 Acts and Resolves No. 160, Sec. 1, and 2023 Acts and Resolves No. 23, Sec. 12, is further amended to read:

Sec. 21. EFFECTIVE DATES

** * **

(d) Sees. 17-19 shall take effect on July 1, 2024. [Deleted.]

Sec. 5. 2020 Acts and Resolves No. 124, Secs. 3 and 7, are amended to read:

Sec. 3. [Deleted.]

Sec. 7. [Deleted.]

Sec. 6. 2020 Acts and Resolves No. 124, Sec. 12, as amended by 2022 Acts and Resolves No. 160, Sec. 2, and 2023 Acts and Resolves No. 23, Sec. 13, is further amended to read:

Sec. 12. EFFECTIVE DATES

(a) Sees. 3 (33 V.S.A. § 5103(e)) and 7 (33 V.S.A. § 5206) shall take effect on July 1, 2024. [Deleted.]

** * **

Sec. 7. 33 V.S.A. § 5201(d) is amended to read:

(d) Any proceeding concerning a child who is alleged to have committed any offense other than those specified in subsection 5204(a) of this title before attaining 19 20 years of age shall originate in the Family Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

Sec. 8. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

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

** * **

(c) If it appears to the State's Attorney that the defendant was under 19 20 years of age at the time the felony offense charged was alleged to have been committed and the felony charged is not an offense specified in subsection

5204(a) of this title, the State's Attorney shall file charges in the Family Division of the Superior Court, pursuant to section 5201 of this title. The Family Division may transfer the proceeding to the Criminal Division pursuant to section 5204 of this title.

* * *

Sec. 9. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

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

* * *

Sec. 10. 33 V.S.A. § 5103(c) is amended to read:

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

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

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

(ii) 20th birthday if the child was 18 years of age when ~~he or she~~ the child committed the offense; or

(iii) 21st birthday if the child was 19 years of age when the child committed the offense.

* * *

Sec. 11. 33 V.S.A. § 5206 is amended to read:

§ 5206. CITATION OF 16- TO ~~18-YEAR-OLDS~~ 19-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under ~~19~~ 20 years of age at the time the offense was alleged to have been committed and the offense is not

specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

* * *

*Sec. 12. BIMONTHLY PROGRESS REPORTS TO JOINT LEGISLATIVE
JUSTICE OVERSIGHT COMMITTEE*

(a) On or before the last day of every other month from July 2024 through March 2025, the Department for Children and Families shall report to the Joint Legislative Justice Oversight Committee, the Senate and House Committees on Judiciary, the House Committee on Corrections and Institutions, the House Committee on Human Services, and the Senate Committee on Health and Welfare on its progress toward implementing the requirement of Secs. 7–11 of this act that the Raise the Age initiative take effect on April 1, 2025. The progress reports required by this section shall describe the steps taken to implement the following goals:

- (1) establishing a secure residential facility;*
- (2) expanding capacity for nonresidential treatment programs to provide community-based services;*
- (3) ensuring that residential treatment programs are used appropriately and to their full potential;*
- (4) expanding capacity for Balanced and Restorative Justice (BARJ) contracts;*
- (5) expanding capacity for the provision of services to children with developmental disabilities;*
- (6) establishing a stabilization program for children who are experiencing a mental health crisis;*
- (7) enhancing long-term treatment for children;*
- (8) programming to help children, particularly 18- and 19-year-olds, transition from youth to adulthood;*
- (9) developing district-specific data and information on family services workforce development, including turnover, retention, and vacancy rates; times needed to fill open positions; training opportunities and needs; and instituting a positive culture for employees;*
- (10) installation of a comprehensive child welfare information system;*
and
- (11) plans for and measures taken to secure funding for the goals listed in this section.*

(b) Failure to meet one or more of the progress report elements listed in subsection (a) of this section shall not be a basis for extending the implementation of the Raise the Age initiative beyond April 1, 2025.

** * * Drug Crimes * * **

Sec. 13. 18 V.S.A. § 4201 is amended to read:

§ 4201. DEFINITIONS

** * **

(29) “Regulated drug” means:

- (A) a narcotic drug;*
- (B) a depressant or stimulant drug, other than methamphetamine;*
- (C) a hallucinogenic drug;*
- (D) Ecstasy;*
- (E) cannabis; ~~or~~*
- (F) methamphetamine; or*
- (G) xylazine.*

** * **

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

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

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

Sec. 14. 18 V.S.A. § 4233b is added to read:

§ 4233b. XYLAZINE

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

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

(1) dispensing or prescribing for, or administration to, a nonhuman species a drug containing xylazine approved by the Secretary of Health and Human Services pursuant to section 512 of the Federal Food, Drug, and Cosmetic Act as provided in 21 U.S.C. § 360b;

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

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

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

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

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

Sec. 15. 18 V.S.A. § 4250 is amended to read:

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

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

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

(c)(1) Except as provided in subdivision (2) of this subsection, the two-year minimum term of imprisonment required by this section shall be served and

may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the two-year term of imprisonment.

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

Sec. 16. 18 V.S.A. § 4252a is added to read:

§ 4252a. UNLAWFUL DRUG ACTIVITY IN A DWELLING; FLASH CITATION; CONDITIONS OF RELEASE

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

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

Sec. 17. 18 V.S.A. § 4254(j) is added to read:

(j) To encourage persons to seek medical assistance for someone who is experiencing an overdose, the Department of Health, in partnership with entities that provide education, outreach, and services regarding substance use disorder, shall engage in continuous efforts to publicize the immunity protections provided in this section.

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

(a) Secs. 1–6, 12–17, and this section shall take effect on July 1, 2024.

(b) Secs. 7–11 shall take effect on April 1, 2025.