

**No. 62. An act relating to criminal justice.**

(H.503)

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

\* \* \* Release Prior to Trial \* \* \*

Sec. 1. 13 V.S.A. § 7551 is amended to read:

§ 7551. APPEARANCE BONDS; GENERALLY

(a) A bond given by a person charged with a criminal offense or by a witness in a criminal prosecution under section 6605 of this title, conditioned for the appearance of the person or witness before the court in cases where the offense is punishable by fine or imprisonment, and in appealed cases, shall be taken to the ~~district or superior court~~ Criminal Division of the Superior Court where the prosecution is pending, and shall remain binding upon parties until discharged by the court or until sentencing. The person or witness shall appear at all required court proceedings.

(b) No bond may be imposed at the initial appearance of a person charged with a misdemeanor if the person was cited for the offense in accordance with Rule 3 of the Vermont Rules of Criminal Procedure. This subsection shall not be construed to restrict the court's ability to impose conditions on such persons to reasonably ensure his or her appearance at future proceedings or to reasonably protect the public in accordance with section 7554 of this title.

Sec. 2. 28 V.S.A. § 301 is amended to read:

§ 301. SUMMONS OR ARREST OF PROBATIONER

\* \* \*

(2) Arrest or citation of person on probation. Any correctional officer may arrest a probationer without a warrant if, in the judgment of the correctional officer, the probationer has violated a condition or conditions of his or her probation other than a condition that the probationer pay restitution; or may deputize any other law enforcement officer to arrest a probationer without a warrant by giving him or her a written statement setting forth that the probationer has, in the judgment of the correctional officer, violated a condition or conditions of his or her probation other than a condition that the probationer pay restitution. The written statement delivered with the person by the arresting officer to the supervising officer of the correctional facility to which the person is brought for detention shall be sufficient warrant for detaining him or her. In lieu of arrest, a correctional officer may issue a probationer a citation to appear for arraignment. In deciding whether to arrest or issue a citation, an officer shall consider whether issuance of a citation will reasonably ensure the probationer's appearance at future proceedings and reasonably protect the public.

\* \* \*

(4) Detention pending hearing for probationer. Pending arraignment for any charge of violation, the probationer shall ~~continue to~~ be detained at a

correctional facility unless issued a citation by a correctional officer.

Thereafter, the court may release the probationer pursuant to 13 V.S.A. § 7554.

There shall be no right to bail or release, unless the person is on probation for a nonviolent misdemeanor or nonviolent felony ~~and the probation violation did not constitute a new crime.~~

(5)(A) At arraignment, if the court finds that bail or conditions of release will reasonably ensure the probationer's appearance at future proceedings and conditions of release will reasonably protect the public, the court shall release a probationer who is on probation for a nonviolent misdemeanor or nonviolent felony pursuant to 13 V.S.A. § 7554.

(B) As used in this ~~subdivision~~ section:

~~(A)(i)~~ “Nonviolent felony” means a felony offense ~~which~~ that is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

~~(B)(ii)~~ “Nonviolent misdemeanor” means a misdemeanor offense ~~which~~ that is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.

### Sec. 3. PRETRIAL COMMUNICATIONS RECOMMENDATIONS

The Court Administrator, the Department of State's Attorneys and Sheriffs, the Office of the Defender General, and the Vermont Chapter of the American Civil Liberties Union shall work together and with other interested parties to

examine options for facilitating pretrial communication between the courts and defendants with a goal of reducing the risk of nonappearance by defendants. The parties jointly shall provide options and costs of such options to the Joint Committee on Justice Oversight on or before October 15, 2017.

\* \* \* Regulated Drugs \* \* \*

Sec. 4. 18 V.S.A. § 4233a is added to read:

§ 4233a. FENTANYL

(a) Selling or dispensing.

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

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or

dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.

(b) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl 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 fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(c) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

Sec. 5. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

\* \* \*

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 6. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement

officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

- (1) murder in the first or second degree;
- (2) arson under sections 501-504 and 506 of this title;
- (3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;
- (4) receiving stolen property under sections 2561-2564 of this title; or
- (5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:
  - (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;
  - (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;
  - (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than fentanyl, heroin or cocaine; ~~or~~

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine; or

(F) 18 V.S.A. § 4233a(b), relating to trafficking in fentanyl.

Sec. 7. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

\* \* \*

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.



(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

(i) the name and address of the purchaser;

(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;

(iii) the date and time of purchase;

(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and

(v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply

with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than \$100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.

(d) This section shall not apply to a manufacturer ~~which~~ that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) “Distributor” means a person, other than a manufacturer or wholesaler, ~~who~~ that sells, delivers, transfers, or in any manner furnishes a drug product to any person ~~who~~ that is not the ultimate user or consumer of the product.

(2) “Knowingly” means having actual knowledge of the relevant facts.

(3) “Manufacturer” means a person ~~who~~ that produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) “Wholesaler” means a person, other than a manufacturer, ~~who~~ that sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

#### Sec. 8. USE OF U.S. FOOD AND DRUG ADMINISTRATION-

##### APPROVED DRUGS CONTAINING CANNABIDIOL

(a) Upon approval by the U.S. Food and Drug Administration (FDA) of one or more prescription drugs containing cannabidiol, the following activities shall be lawful in Vermont:

(1) the clinically appropriate prescription for a patient of an FDA-approved prescription drug containing cannabidiol by a health care provider licensed to prescribe medications in this State and acting within his or her authorized scope of practice;

(2) the dispensing, pursuant to a valid prescription, of an FDA-approved prescription drug containing cannabidiol to a patient or a patient's authorized representative by a pharmacist or by another health care provider licensed to dispense medications in this State and acting within his or her authorized scope of practice;

(3) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued or by the patient's authorized representative;

(4) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a licensed pharmacy or wholesaler in order to facilitate the appropriate dispensing and use of the drug; and

(5) the use of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued, provided the patient uses the drug only for legitimate medical purposes in conformity with instructions from the prescriber and dispenser.

(b) Upon approval by the U.S. Food and Drug Administration of one or more prescription drugs containing cannabidiol, the Department of Health shall amend its rules to conform to the provisions of subsection (a) of this section.

\* \* \* Impaired Driving \* \* \*

Sec. 9. 23 V.S.A. § 1202 is amended to read:

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

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

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

(3) Evidentiary test. The evidentiary test shall be required of a person when a law enforcement officer has reasonable grounds to believe that the

person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title.

(4) Fatal collision or incident resulting in serious bodily injury. The evidentiary test shall also be required if the person is the surviving operator of a motor vehicle involved in a fatal incident or collision or an incident or collision resulting in serious bodily injury and the law enforcement officer has reasonable grounds to believe that the person has any amount of alcohol or other drug in his or her system.

~~(b) If the person refuses to submit to an evidentiary test it shall not be given, except as provided in subsection (f) of this section, but the A refusal to take a breath test may be introduced as evidence in a criminal proceeding.~~

\* \* \*

(f) If a blood test is sought from a person pursuant to subdivision (a)(2) of this section, or if a person who has been involved in an accident or collision resulting in serious bodily injury or death to another refuses an evidentiary test, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an evidentiary test. If a blood sample is obtained by search warrant, the fact of the refusal may still be introduced in evidence, in addition to the results of the evidentiary test. Once a law enforcement official begins the application process for a search warrant, the law enforcement official is not obligated to discontinue the process even if the person later agrees to provide an

evidentiary breath sample. The limitation created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding blood specimens shall not apply to search warrants authorized by this section.

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\* \* \* Humane and Proper Treatment of Animals \* \* \*

Sec. 10. 13 V.S.A. chapter 8 is amended to read:

## CHAPTER 8. HUMANE AND PROPER TREATMENT OF ANIMALS

### Subchapter 1. Cruelty to Animals

#### § 351. DEFINITIONS

As used in this chapter:

(1) “Animal” means all living sentient creatures, not human beings.

\* \* \*

(19) “Sexual conduct” means:

(A) any act between a person and animal that involves contact between the mouth, sex organ, or anus of a person and the mouth, sex organ, or anus of an animal; or

(B) without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of a person’s body or of any instrument, apparatus, or other object into the vaginal or anal opening of an animal.

\* \* \*

§ 352. CRUELTY TO ANIMALS

A person commits the crime of cruelty to animals if the person:

(1) intentionally kills or attempts to kill any animal belonging to another person without first obtaining legal authority or consent of the owner;

(2) overworks, overloads, tortures, torments, abandons, administers poison to, cruelly beats or mutilates an animal, or exposes a poison with intent that it be taken by an animal;

\* \* \*

(10) uses a live animal as bait or lure in a race, game, or contest, or in training animals in a manner inconsistent with 10 V.S.A. Part 4 of Title 10 or the rules adopted thereunder;

(11)(A) engages in sexual conduct with an animal;

(B) possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent that it be used for sexual conduct;

(C) organizes, promotes, conducts, aids, abets, or participates in as an observer an act involving any sexual conduct with an animal;

(D) causes, aids, or abets another person to engage in sexual conduct with an animal;

(E) permits sexual conduct with an animal to be conducted on premises under his or her charge or control; or

(F) advertises, offers, or accepts the offer of an animal with the intent that it be subject to sexual conduct in this State.



§ 352a. AGGRAVATED CRUELTY TO ANIMALS

A person commits the crime of aggravated cruelty to animals if the person:

- (1) kills an animal by intentionally causing the animal undue pain or suffering;
- (2) intentionally, maliciously, and without just cause tortures, mutilates, or cruelly beats an animal; or
- (3) intentionally injures or kills an animal that is in the performance of official duties while under the supervision of a law enforcement officer.

\* \* \*

§ 353. DEGREE OF OFFENSE; SENTENCING UPON CONVICTION

(a) Penalties.

(1) Except as provided in subdivision (3) ~~or~~ (4), or (5) of this subsection, cruelty to animals under section 352 of this title shall be punishable by a sentence of imprisonment of not more than one year, or a fine of not more than \$2,000.00, or both. Second and subsequent convictions shall be punishable by a sentence of imprisonment of not more than two years or a fine of not more than \$5,000.00, or both.

(2) Aggravated cruelty under section 352a of this title shall be punishable by a sentence of imprisonment of not more than ~~three~~ five years or a fine of not more than \$5,000.00, or both. Second and subsequent offenses shall be punishable by a sentence of imprisonment of not more than ~~five~~ ten years or a fine of not more than \$7,500.00, or both.

\* \* \*

(5) A person who violates subdivision 352(1) of this title by intentionally killing or attempting to kill an animal belonging to another or subdivision 352(2) of this title by torturing, administering poison to, or cruelly beating or mutilating an animal shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

\* \* \*

\* \* \* Electronic Monitoring \* \* \*

Sec. 11. 13 V.S.A. § 7554b is amended to read:

§ 7554b. HOME DETENTION PROGRAM

(a) Definition. As used in this section, “home detention” means a program of confinement and supervision that restricts a defendant to a preapproved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the Department of Corrections. The court may authorize scheduled absences such as work, school, or treatment. Any changes in the schedule shall be solely at the discretion of the Department of Corrections. A defendant who is on home detention shall remain in the custody of the Commissioner of Corrections with conditions set by the ~~Court~~ court.

(b) Procedure. ~~The~~ At the request of the court, the Department of Corrections, or the defendant, the status of a defendant who is detained pretrial ~~for more than seven days~~ in a correctional facility for lack of bail may be

reviewed by the ~~Court~~ court to determine whether the defendant is appropriate for home detention. ~~The request for review may be made by either the Department of Corrections or the defendant. After~~ At arraignment or after a hearing, the court may order that the defendant be released to the Home Detention Program, providing that the ~~Court~~ court finds placing the defendant on home detention will reasonably assure his or her appearance in ~~Court~~ court when required and the proposed residence is appropriate for home detention. In making such a determination, the court shall consider:

\* \* \*

(d) Credit for time served. A defendant shall receive credit for a sentence of imprisonment for time served in the Home Detention Program.

## Sec. 12. ELECTRONIC MONITORING

(a) The Commissioner of Corrections shall establish an active electronic monitoring program with real-time enforcement. The Commissioner of Corrections, in consultation with the Department of State's Attorneys and Sheriffs, may contract with a third party to implement the program.

(b) The Electronic Monitoring Program described in subsection (a) of this section may be used to monitor, in lieu of incarcerating in a facility, the following populations:

(1) offenders in the custody of the Commissioner who are eligible for the Home Detention Program described in 13 V.S.A. § 7554b; and

(2) offenders in the custody of the Commissioner, including the following target populations:

(A) offenders who are eligible for home confinement furlough, as described in 28 V.S.A. § 808b;

(B) offenders who are past their minimum sentence and are deemed appropriate for the Program by the Commissioner of Corrections; or

(C) offenders who are eligible for reintegration furlough, as described in 28 V.S.A. § 808c.

(c) An offender shall only be eligible for the Electronic Monitoring Program described in subsection (a) of this section if electronic monitoring equipment is fully functional in the geographic area where the offender will be located.

#### Sec. 13. EFFECTIVE DATES

This section and Secs. 7 (ephedrine and pseudoephedrine), 9 (impaired driving), and 12 (electronic monitoring) shall take effect on passage. The remaining sections shall take effect on July 1, 2017.

Date Governor signed bill: June 7, 2017