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S.298

Introduced by Senators Brock, Norris and Collamore

Referred to Committee on

Date:

Subject: Regulated drugs; fentanyl; use of a minor in drug crimes; second and subsequent offenses; selling or dispensing a regulated drug with death resulting

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

20 An act relating to increasing penalties for drug-related offenses

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 (48) “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 (49) “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. § 4237 is amended to read:

15 § 4237. SELLING OR DISPENSING TO MINORS; SELLING ON SCHOOL

16 GROUND; USE OF MINOR TO VIOLATE THIS CHAPTER

17 (a) Dispensing regulated drugs to minors. A person knowingly and  
18 unlawfully dispensing any regulated drug to a minor who is at least three years  
19 that person’s junior shall be sentenced to a term of imprisonment of not more  
20 than five years.

1           (b) Sale of regulated drugs. A person knowingly and unlawfully selling  
2 any regulated drug to a minor shall, in addition to any other penalty, be  
3 sentenced to a term of imprisonment of not more than 10 years.

4           (c) Selling on school grounds. No person shall knowingly and unlawfully:

5               (1) dispense or sell a regulated drug to any person on a school bus or on  
6 real property owned by a public or private elementary, secondary, or  
7 vocational school;

8               (2) sell a regulated drug to any person on real property abutting real  
9 property owned by a public or private elementary, secondary, or vocational  
10 school; or

11              (3) dispense a regulated drug to any person in public view on real  
12 property abutting real property owned by a school.

13           (d) Use of minors.

14               (1) A person shall not knowingly employ, hire, use, persuade, induce,  
15 entice, or coerce a minor to violate any provision of this chapter.

16               (2) A person shall not knowingly employ, hire, use, persuade, induce,  
17 entice, or coerce a minor to assist in avoiding detection or apprehension for  
18 any offense of this chapter.

19           (e) Abutting school property. The selling or dispensing of a regulated drug  
20 to a person on property abutting school property is a violation under this

1 section only if it occurs within 500 feet of the school property. Property shall  
2 be considered abutting school property if:

3 (1) it shares a boundary with school property; or

4 (2) it is adjacent to school property and is separated only by a river,  
5 stream, or public highway.

6 ~~(e)~~(f) Penalty.

7 (1) A person who violates subsection (c) of this section shall, in addition  
8 to any other penalty, be sentenced to a term of imprisonment of not more than  
9 10 years.

10 (2) A person who violates subdivision (d)(1) or (2) of this section:

11 (A) For a first offense, shall be subject to twice the maximum  
12 punishment otherwise authorized by law. Except to the extent a greater  
13 minimum sentence is otherwise provided, a term of imprisonment under this  
14 subsection (f) shall not be less than one year.

15 (B) For a second offense, shall be subject to three times the  
16 maximum punishment otherwise authorized by law. Except to the extent a  
17 greater minimum sentence is otherwise provided, a term of imprisonment  
18 under this subsection (f) shall not be less than one year.

19 ~~(f)~~(g) Definitions. As used in this section:

20 (1) "Minor" means a person under ~~the age of 18~~ 19 years of age.

1           (2) “Owned by a school” means owned, leased, controlled, or  
2 subcontracted by a school and used frequently by students for educational or  
3 recreational activities.

4           Sec. 3. 18 V.S.A. § 4238 is amended to read:

5           § 4238. SECOND AND SUBSEQUENT OFFENSES

6           (a) Penalty. A Except as provided in subsection (b) of this section, a  
7 person convicted of a second or subsequent offense of violating section 4228,  
8 4230, 4231, 4232, 4233, 4234, 4235, 4236, or 4237 of this title, except a  
9 violation of subdivision 4230(a)(1), or a comparable offense in another  
10 jurisdiction of the United States, shall be subject to a term of imprisonment or  
11 fined up to twice that authorized by those sections, or both.

12           (b) Trafficking.

13           (1) A person convicted of a second or subsequent offense for trafficking  
14 a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c),  
15 4233a(b), or 4234a(c) of this title, or a comparable offense in another  
16 jurisdiction of the United States, shall be imprisoned not less than three years  
17 and not more than 30 years or fined not more than \$2,000,000.00, or both.

18           (2) Except as provided in subdivision (3) of this subsection, the three-  
19 year minimum term of imprisonment required by this section shall be served  
20 and shall not be suspended, deferred, or served as a supervised sentence. The

1 defendant shall not be eligible for probation, parole, furlough, or any other type  
2 of early release until the expiration of the three-year term of imprisonment.

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

8 Sec. 4. 18 V.S.A. § 4250 is amended to read:

9 § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH  
10 DEATH RESULTING

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

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

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

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

11       Sec. 5. EFFECTIVE DATE

12       This act shall take effect on July 1, 2024.