H.150

Introduced by Representatives Zuckerman of Burlington, Clarkson of Woodstock, Conquest of Newbury, Davis of Washington, Deen of Westminster, Donovan of Burlington, Edwards of Brattleboro, French of Randolph, Klein of East Montpelier, Lorber of Burlington, Marek of Newfane, Masland of Thetford, Milkey of Brattleboro, Pellett of Chester, Peltz of Woodbury, Spengler of Colchester, Sweaney of Windsor, Weston of Burlington and Zenie of Colchester

Referred to Committee on

Date:

Subject: Regulated drugs; marijuana

Statement of purpose: This bill proposes to change the penalties for the possession of small amounts of marijuana. A person who possesses one ounce or less of marijuana would be assessed a civil fine of up to $100.00, while possession of larger amounts would continue to be criminal offenses subject to imprisonment. Minors who possess one ounce or less of marijuana would be required to complete a drug awareness and community service program run by court diversion. A minor who fails to complete the program would be assessed a civil fine of up to $300.00 and would lose his or her driver's license for 90 days.

An act relating to penalties for possession of marijuana

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

Sec. 1. SHORT TITLE

This act may be known as "An Act Establishing a Sensible State Marijuana Policy."

Sec. 2. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce containing any marijuana shall be imprisoned not more than six months or fined not more than $500.00, or both. A person convicted of a second or subsequent offense under this subdivision shall be imprisoned not more than two years or fined not more than $2,000.00, or both. Upon an adjudication of guilt for a first offense under this subdivision, the court may defer sentencing as provided in section 7041 of Title 13 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 marijuana in an amount consisting of one or more preparations, compounds, mixtures or substances, of an aggregate weight of two ounces or more containing any marijuana or knowingly and unlawfully cultivating more than three plants of marijuana 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 marijuana in an amount consisting of one or more preparations, compounds, mixtures or substances, of an aggregate weight of one pound or more containing any marijuana or knowingly and unlawfully cultivating more than ten plants of marijuana shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

(4) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures or substances, of an aggregate weight of ten pounds or more or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than $500,000.00, or both.

* * *

(c) Neither this section nor section 4230b of this title shall:

(1) exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind; or

(2) be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.

(d) Neither this section nor section 4230b of this title shall be construed to limit the authority of primary and secondary schools to impose noncriminal penalties for the possession of marijuana on school property.

(e) 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.

Sec. 4. 18 V.S.A. § 4230b is added to read:

§ 4230b. MARIJUANA; POSSESSION BY MINOR; CIVIL VIOLATION

(a)(1) A minor shall not knowingly and unlawfully possess marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or less containing any marijuana.

(2) Except as otherwise provided in this section, a person who violates subdivision (1) of this subsection commits a civil violation and shall be assessed a civil penalty of not more than $300.00, and the person's operator's

license and privilege to operate a motor vehicle shall be suspended for a period of 90 days.

(b)(1) A law enforcement officer shall issue a notice of violation, in a form approved by the court administrator, to a person who violates this section. The notice of violation shall require the person to provide his or her name and address, and shall explain procedure under this section, including that:

(A) the person must contact within 15 days the diversion board in the county where the offense occurred;

(B) failure to contact the diversion board within 15 days will result in the case being referred to the judicial bureau, where the person, if found liable for the violation, will be subject to a civil penalty of not more than $300.00 and a 90-day suspension of the person's operator's license;

(C) no money should be submitted to pay any penalty until after adjudication; and

(D) the person shall notify the diversion board if the person's address changes.

(2) When a person is issued a notice of violation under subdivision (1) of this subsection, the law enforcement officer shall complete a summons and complaint for the offense and send it to the diversion board in the county where the offense occurred. The summons and complaint shall not be filed with the judicial bureau at that time.

(3) Within 15 days after receiving a notice of violation issued under subdivision (1) of this subsection, the person shall contact the diversion board in the county where the offense occurred and register for the drug awareness program. If the person fails to do so, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.

(d) If a person fails to pay a penalty imposed under this section by the time ordered, the judicial bureau shall notify the commissioner of motor vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(e)(1) Upon receipt from a law enforcement officer of a summons and complaint completed under subdivision (b)(2) of this section, the diversion board shall send the person a notice to report to the diversion board. The notice to report shall provide that:

(A) The person is required to complete a drug awareness program consisting of at least four hours of classroom instruction or group discussion and ten hours of community service.

(B) If the person does not satisfactorily complete the drug awareness program and community service within one year of the offense, the case will be referred to the judicial bureau, where the person, if found liable for the violation, will be subject to a civil penalty of not more than $300.00, and the person's driver's license will be suspended for 90 days.

(C) If the person satisfactorily completes the drug awareness and community service screening, no penalty will be imposed, and the person's operator's license will not be suspended.

(2) Upon being contacted by a person who has been issued a notice of violation under subdivision (b)(1) of this section, the diversion board shall register the person in the drug awareness and community service program. The program, which the diversion board shall establish pursuant to this section, shall provide at least four hours of classroom instruction or group discussion and ten hours of community service. The subject matter of the program shall be specific to the use and abuse of marijuana and other regulated drugs, with particular emphasis on early detection and prevention of drug abuse.

(3) When a person has satisfactorily completed the drug awareness and community service program, the diversion board shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the judicial bureau and to the law enforcement officer who completed them. Before

sending copies of the voided summons and complaint to the judicial bureau under this subdivision, the diversion board shall redact all language containing the person's name, address, Social Security number, and any other information which identifies the person.

(4) If a person does not satisfactorily complete the drug awareness and community service program, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the diversion board may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(c) A violation of this section shall not result in the creation of a criminal history record of any kind, and no information about the violation shall be maintained in any criminal record or database.

Sec. 5. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

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(b) The judicial bureau shall have jurisdiction of the following matters:

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(17) Violations of 18 V.S.A. §§ 4230a and 4230b, relating to possession of one ounce or less of marijuana.

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Sec. 6. 13 V.S.A. § 7251 is amended to read:

§ 7251. MUNICIPALITIES; PAYMENT TO AND LIABILITY OF

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(e)(1) Fifty percent of the fines, forfeitures, and penalties imposed by the judicial bureau for violations of sections 4230a and 4230b of Title 18, relating to possession of one ounce or less of marijuana that result from enforcement of those sections by villages, towns, and cities within their jurisdiction shall be paid to the respective village, town, or city, except for a $12.50 administrative charge for each violation which shall be retained by the state. The remaining 50 percent shall be paid to the court diversion program for funding of the drug awareness and community safety program established pursuant to section 4230b of Title 18. Any remainder shall be paid to the office of alcohol and drug abuse programs to fund other drug awareness education programs.

(2) The enforcement by villages, towns, and cities shall be by a local law enforcement officer or a law enforcement officer by contract with the village, town, or city. Such law enforcement officer shall be certified according to the provisions of 20 V.S.A. § 2358.