

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2015**

Bill Number: H.151 Name of Bill: An act relating to various amendments to the heroin possession and sale statutes.

Agency/Dept: VSP/NIU-HQ Author of Bill Review: Shawn Loan

Date of Bill Review: 3/16/2015 Related Bills and Key Players: \_\_\_\_\_

Status of Bill: (check one)

Upon Introduction       As passed by 1<sup>st</sup> body       As passed by both bodies

Recommended Position:

Support       Oppose       Remain Neutral       Support with modifications identified in # 8 below

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**Analysis of Bill**

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1. **Summary of bill and issue it addresses.** *Increase criminal penalties for heroin possession and heroin possessors with prior convictions, create criminal penalties for knowingly being in a place or with a person when heroin is possessed, and create criminal penalties for possession with intent to sell under 3.5 grams of heroin. These new penalties and crimes would reach repeat offenders, persons that knowingly assist heroin traffickers and possessors, and create a chargeable offense for possession with intent to sale when a person is possessing heroin under 3.5 grams, but packaged for sale.*
2. **Is there a need for this bill?** *Yes, both to increase the penalties for, and the possibility of court ordered drug treatment of, repeat heroin possession offenders. Also, the creation of a crime for possession with intent to distribute LESS than 3.5 grams creates a more reasonable heroin weight threshold, since the drug is commonly sold in smaller quantities and often weighed in milligrams or packaged in bags containing +/- 30 mgs. The creation of a crime for knowingly being in a place where heroin is kept or distributed and with person possessing heroin allows the arrest and possibility of incarceration and/or drug treatment for persons who are at drug houses during seizures, in vehicles during trafficking (within and from out-of state), and persons facilitating the possession, distribution, and use of heroin, without possessing the drug themselves.*
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?** *The bill would allow State Police and other investigators to arrest more of the people involved in the facilitation of the heroin trade in Vermont, repeat and problematic offenders, and those who choose to possess amounts less than 3.5 grams to be charged as distributors as an intent, instead of possessors.*
4. **What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** *This bill would allow for more criminal charges filed against repeat offenders and people involved in the trafficking and distribution of heroin to include the people providing housing and transportation for distributors. These arrests will create more strain on the court system, drug treatment programs, the correctional facilities, and the probation and parole officers.*

5. **What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *With increased arrests under this bill, more families will be affected by incarceration, absences for drug treatment, fines and penalties, and criminal action for knowingly living with, or physically being present with a possessor or distributor of heroin. Some members of the public may see increased penalties for possession and previous offenses as harsh or not an appropriate response to reducing the use of heroin by Vermonters. They may miscomprehend the idea that simply being in the vicinity of heroin could be a crime under the proposed bill.*

6. **Other Stakeholders:**

6.1 **Who else is likely to support the proposal and why?** *Law enforcement and prosecutors would likely support the bill in hopes to arrest and/or deter low level distributors and users, particularly Vermonters who facilitate the trafficking of heroin into the state of Vermont.*

6.2 **Who else is likely to oppose the proposal and why?** *People supporting the legalization of drugs within the state of Vermont and people working in the human services and rehabilitation fields may oppose the bill, citing that arrests and incarceration are not the answers to dependency and the disease of drug addiction.*

**Rationale for recommendation:** *The bill would allow for both increasing the penalties for, and the possibility of court ordered drug treatment of, repeat heroin possession offenders. This can be used as a penalty or an opportunity for treatment for each individual offender. The crime for possession with intent to distribute LESS than 3.5 grams is a more reasonable guideline for a drug commonly sold in packages containing +/- 30 milligrams. Often distributors will package heroin in "bundles" of ten bags or approximately 300-330 mgs for between 100 and 250 dollars (depending on location with Vermont). At that rate, the current law, which states "There shall be a permissive inference that a person who possesses heroin in an amount of 3.5 grams or more...intends to sell or dispense the heroin," requires a possessor to carry between 1100 and 2900 dollars of heroin to be considered a distributor. Since the drug is commonly sold in packages of 30-300 milligrams, a lower threshold for possession of multiple packages with a weight less than 3.5 grams (3500 mgs), would allow distributors caught possessing multiple packages to be charged with the severer criminal penalties for sale/dispensing.*

*The creation of a crime for knowingly being in a place where heroin is kept or distributed and with person possessing heroin allows the arrest and possibility of incarceration and/or drug treatment for persons who are at drug houses during seizures, in vehicle during heroin trafficking (within and from out-of state), and persons facilitating the possession, distribution, and use of heroin, without possessing the drug themselves. This means more people, a great majority likely to be drug dependent, would be required to attend court ordered drug treatment, probation/parole, and incarceration, if needed. These people would be within a state system that can offer more health and safety options, counseling, and therapy, as well as opioid specific medical treatment.*

7. **Specific modifications that would be needed to recommend support of this bill:** *Increased criminal penalties for persons possessing heroin in amounts less than 200 milligrams, currently a misdemeanor, should still allow for first offenders to not receive a drug felony and give the offender the option for treatment and/or a drug diversion program. Repeat convictions should specifically carry a more rigid penalty that should not be treated with the same consideration as a first time offender.*

9. **Gubernatorial appointments to board or commission?** *N/A*

Secretary/Commissioner has reviewed this document



Date: 4/6/15