

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S137 Name of Bill: Crimes; regulated drugs; selling and dispensing marijuana

Agency/Dept: Public Safety/VSP Author of Bill LT. Matthew Amadon
Review: _____

Date of Bill Review: 03-17-2015 Related Bills and Key Players: Senate Committee on Judiciary
Sen. Dick Sears/ Sen. Joe Benning

Status of Bill: (check one)

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies

Recommended Position:

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

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The first goal of this bill intends to clarify the circumstances under which a person commits a civil offense rather than a criminal offense for dispensing marijuana or hashish. Under Title 18 VSA 4230 (b)(1), (2) or (3), 'Selling and Dispensing', as the law is currently written states an individual who 'dispenses' marijuana or hashish is subject to criminal charges, no matter the quantity. This bill would not change a violation regarding the 'sale of marijuana or hashish', but would remove any violation related to 'dispensing' of 1 ounce or less of marijuana or 5 grams or less of hashish so that it would result in a civil violation under Title 18 VSA 4230a, 4230b, or 4230c, 'Marijuana Possession-Civil'.

Title 18 VSA 4201 provides definitions to differentiate between 'selling' and 'dispensing'. They are:

- (a) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.
- (b) "Sale" means transfer for a consideration or barter or exchange or an offer or express or implied promise to transfer for a consideration or barter or exchange, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

The second goal of this bill intends to raise the felony threshold for selling and dispensing marijuana and hashish. The law (18 VSA 4230(b)(2)) currently lists the thresholds for selling or dispensing of marijuana or hashish, which would result in a felony sale charge, as 1/2 ounce or more of marijuana or 2.5 grams or more of hashish. This bill proposes to raise that threshold to more than 1 ounce of marijuana and more than five grams of hashish. The changes in these thresholds will ensure that the amounts for both civil and criminal violations regarding 'dispensing' marijuana and hashish and 'possession' of marijuana and hashish are aligned.

2. Is there a need for this bill?

This bill is needed if the goal is to move 'dispensing' small amounts of marijuana and hashish from the criminal arena into the civil arena. As noted above, the thresholds for 'possessing' marijuana or hashish that constitute a civil violation under Title 18 VSA 4230(a)(1)(A) are currently not the same for 'dispensing' marijuana or hashish under Title

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18 VSA 4230(b)(1), resulting in the need to align the thresholds to more than 1 ounce of marijuana and more than five grams of hashish for both 'possessing' and 'dispensing' (civil).

At this time, 'selling' and 'dispensing' marijuana or hashish is a criminal violation. Members of the public currently have a legal means to access and possess marijuana if needed for any legitimate medical reason. This bill would allow individuals 'dispense' small amounts of marijuana or hashish with minimal regulation, without the consent of an approving source, such as a doctor. At a time when the focus of law enforcement is public safety and being able to regulate marijuana for those who need it through 'legal' dispensaries, this would essentially allow individuals to provide others with marijuana or hashish who do not have the legal means to possess marijuana or hashish without going through the appropriate channels with minimal repercussions.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

This bill would not create any negative fiscal concerns for our Department in regards to developing programs or hiring new personnel. If this bill passes as stated, a violation of 'Dispensing' marijuana or hashish would become a civil infraction, resulting in either (a) diversion or a civil penalty if the individual is under 21 years of age or (b) a civil penalty of \$200.00 - \$500.00 for an individual 21 years of age or older (depending on the number of prior violations). A portion (approximately 50%) of the civil penalty is allocated to assist in funding the Vermont Drug Task Force. In addition, the violation would become a civil ticket as opposed to an arrest, which consumes more time to prepare the appropriate paperwork.

Marijuana continues to be identified by Congress and the DEA as a schedule I drug, which, if decriminalized, may influence law enforcement funding through federal and grant based sources.

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?

The implications of this bill for other departments in state government would be the same as for our department.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?

The implications of this bill for other agencies, municipalities, etc, within the state would be minimal. The Judicial Bureau and Traffic Court personnel would handle an increase in tickets written, though the process would not change a significant amount since they would be handled like any typical traffic ticket written by law enforcement. The Judicial Bureau would receive a small portion of each ticket written to cover administrative costs.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

Individuals who will most likely support this proposal are proponents within the community and government who support the legalization of marijuana. If this bill is passed, it would be viewed as a small step in towards the full decriminalization of marijuana. Also, individuals supporting these changes believe that law enforcement resources will be freed by allowing law enforcement and prosecutors to focus on more pressing issues. Other proponents may be individuals attempting to find alternative revenue sources for the state.

6.2 Who else is likely to oppose the proposal and why?

Individuals who will most likely support this proposal are proponents within the community and government who oppose the legalization of marijuana, such as law enforcement, prosecutors, parents and some medical

professionals. Opponents believe that law enforcement and prosecutors should control the use of their own resources and currently do not devote a large amount of time on marijuana cases. If this bill passed, then this would be viewed as a small, negative step in towards the full decriminalization of marijuana.

7. Rationale for recommendation: *Justify recommendation stated above.*

While the current political climate is leaning toward the decriminalization of marijuana, the focus for law enforcement has shifted away from drug investigations involving the sale of small amounts of marijuana or hashish toward investigations involving narcotics and narcotic trafficking (ie: heroin, prescription medication, cocaine). This change is due primarily to the large amount of resources that law enforcement has to dedicate to any drug investigation in contrast with the outcome, which is the trend of the courts referring the parties involved in small sale amounts of marijuana or hashish to a drug diversion program or imposing a small monetary penalty. After a search of Spillman, it was revealed that there were only three arrests for the sale/dispensing of marijuana or hashish since January 01, 2014 that would have been impacted by these changes.

Though any individual could argue that there are very few cases in Vermont that would be affected by this bill and law enforcement in Vermont has a continued focus on narcotic trafficking, it is known that individuals in Vermont already have a method to legally obtain or possess marijuana. This law would loosen or relax how marijuana is distributed by individuals in our state without any regulation, which goes against the continued focus of the Department of Public Safety to be able to regulate its distribution in a controlled and safe manner.

8. Specific modifications that would be needed to recommend support of this bill:

Not applicable.

9. Gubernatorial appointments to board or commission?

Secretary/Commissioner has reviewed this document

A handwritten signature in blue ink, appearing to be "Laura Gray", written over a faint rectangular stamp.

Date: 4/30/15