



VSP-TRAIN-1134

Training Bulletins

2018-1 Legislative Overview - Marijuana

INTRODUCTION

Effective July 1, 2018, the General Assembly of Vermont has enacted legislation affecting marijuana.

This document supersedes previous training bulletins.

As set forth in the legislative intent section of Act 86 (H.511), “It is the intent of the General Assembly to eliminate all penalties for possession of one ounce or less of marijuana and two mature and four immature marijuana plants for a person who is 21 years of age or older while retaining criminal penalties for possession, dispensing, and sale of larger amounts of marijuana.” Act 86 (H.511), Section 1. Of note, knowingly and unlawfully selling marijuana remains a criminal offense under 18 V.S.A. § 4230(b).

This training bulletin highlights aspects of the new marijuana legislation to assist Vermont State Police members in understanding the legal changes affecting cultivation, possession, and use of marijuana. **This bulletin is intended to be read in its entirety in order to provide a general summary of the new marijuana legislation for the convenience of VSP members. The summary is not exhaustive and your decision in each circumstance may change depending on the facts. Thus, you must read the text of each of the relevant statutes and confer with your local prosecutor.**

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Definitions

“Marijuana” means

- “all parts of the plant *Cannabis sativa L.*,” except as provided below, whether growing or harvested, including:
 - “the seeds of the plant”;
 - “the resin extracted from any part of the plant”; and
 - “any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.” 18 V.S.A. § 4201(15)(A).
- Marijuana does not mean:
 - mature stalks of plant, fiber from the stalks, hemp, etc. *Id.* § 4201(15)(B).

“Immature marijuana plant” is defined to mean “a female marijuana plant that has not flowered and that does not have buds that may be observed by visual examination.” *Id.* § 4201(43).

“Mature marijuana plant” is defined to mean “a female marijuana plant that has flowered and that has buds that may be observed by visual examination.” *Id.* § 4201(44).

“Passenger area” means “the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.” 23 V.S.A. § 1134(c)(2).

“Enabling” is defined to mean “creating a direct and immediate opportunity for a person to consume marijuana.” 18 V.S.A. § 4230f(b).

“Drug paraphernalia” is defined as “all equipment, products, devices, and materials of any kind that are used, or promoted for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a regulated drug in violation of chapter 84 of this title. ‘Drug paraphernalia’ does not include needles and syringes distributed or possessed as part of an organized community-based needle exchange program.” 18 V.S.A. § 4475(a)(1).

“Public place” is defined to mean “any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation as defined in 9 V.S.A. § 4501, and any place where the use or possession of a lighted tobacco product, tobacco product, or tobacco substitute as defined in 7 V.S.A. § 1001 is prohibited by law.” 18 V.S.A. § 4230a(a)(2)(A).

Highlights/Summaries

- Under this new law, adults 21 years of age or older can possess and cultivate marijuana, with limitations set forth below. Adults (21 years or older) may possess up to 1 ounce of marijuana.¹ Also, adults (21 years or older) may cultivate up to 2 mature and 4 immature marijuana plants per “dwelling unit.” **The 1 ounce limit does not include marijuana cultivated, harvested, and stored in accordance with the provisions of this new law.**

Possession*		
	21 years or older	Under 21
1 ounce or less	Now legal: No penalty	Civil/Diversion
More than 1 ounce	1st - diversion ² ; subsequent – criminal	1st - diversion; subsequent - criminal
2 ounces or more	Criminal	Criminal

*Penalties vary based on amounts and marijuana vs. hashish

¹ Please note additional limitations may be imposed on adult possession and/or cultivation. As further described below, this new legislation does not prohibit landlords and employers from setting certain restrictions on marijuana possession, use, etc., and it does not prohibit municipalities from adopting civil ordinances imposing additional penalties for consuming marijuana in public places. See 18 V.S.A. § 4230a(b)(2).

² Unless prosecutor states otherwise.

Cultivation*		
	21 years or older	Under 21
2 or fewer mature plants AND/OR 4 or fewer immature plants	Now Legal; No penalty	*
2 or fewer mature plants OR 4 or fewer immature plants	Now legal; no penalty	Civil/Diversion
More than 2 mature plants OR more than 4 immature plants	1st - diversion ³ ; subsequent - criminal	1st - diversion; subsequent - criminal
More than 4 mature plants OR more than 8 immature plants	criminal (felony)	criminal (felony)

* Penalties vary based on number of plants; additional numbers of plants provided in the new legislation but not reflected here.

* Prior to taking action, consult with local state's attorney.

Please note: 18 V.S.A. § 4230d addressing possession of marijuana by a person under 16 years of age is repealed.

³ Unless prosecutor states otherwise.

- This law provides varying penalties for dispensing marijuana to persons under the age of 21 years:

Dispensing and Enabling*					
		Dispensed To:			
		Under 21	Age 18, 19, 20	Age 18, 19, or 20 AND more than 3 years younger	Under 18
Dispensed By	21 years or older	Criminal	Criminal	Criminal	Criminal
	Age 18, 19, 20	*	Civil/Diversion	Criminal	Criminal
	Under 18	*	*	*	Delinquent Act

* Prior to taking action, consult with local state’s attorney.

- Consumption of marijuana in a public place constitutes a civil violation.
- Search and Seizure/DUI – odor of marijuana alone does not constitute reasonable suspicion for purposes of search and seizure; however, odor of burnt marijuana may lead to investigation of DUI for signs of impairment.
- Chemical extraction via butane or hexane is prohibited and constitutes a criminal violation.
- A person operating a motor vehicle, or a passenger of the vehicle, on a public highway shall not consume an alcoholic beverage or marijuana. This prohibition “shall extend to the operator’s consumption of secondhand marijuana smoke.” 23 V.S.A. § 1134(a). A person operating a motor vehicle, or a passenger of the vehicle, on a public highway shall not possess any open container which contains an alcoholic beverage or marijuana in the passenger area of the motor vehicle. These constitute civil violations.
- Use of marijuana in a motor vehicle that is occupied by a child under 18 years of age shall constitute a criminal offense.
- Landlords/municipalities/employers
 - Landlords– possession and use can be prohibited pursuant to a lease agreement.

- Unless the cultivation or possession is otherwise prohibited by law, treat as a civil landlord/tenant issue.
 - Municipalities – Can adopt civil ordinance with additional penalties for marijuana consumption in public place.
 - Employers – Can prohibit possession, use, etc.
- **Contraband** – means regulated drugs that persons are prohibited from possessing under Vermont law. Possession of marijuana under certain circumstances is legal in Vermont and therefore should not be seized nor should you document possession of legal drugs for purposes of roadside stop data collection. Please consult with your local state’s attorney about seizures and destruction of contraband.
- Laws that remain unchanged –
 - Selling – For example, see 18 V.S.A. § 4230(b) and § 4237; but also see new provision § 4231i (described below on page 8).
 - DUI – Click [here](#) for 2017 DUI training bulletin/legislative update.

Specific Statute Summaries:

-  Criminal violation
-  Civil violation
-  No penalty/Legal

Marijuana – Possession & Cultivation – 21 years of age or older: 18 VSA 4230

- 1 ounce or less of marijuana or 5 grams or less of hashish and 2 mature marijuana plants or fewer or 4 immature marijuana plants or fewer or possesses marijuana paraphernalia.
 -  No Penalty.
- More than 1 ounce of marijuana or more than 5 grams of hashish or cultivate more than 2 mature marijuana plants or 4 immature plants (Misdemeanor).
 -  First Offense – Court Diversion Program (Unless prosecutor states otherwise on record).
 -  Second or subsequent offense – Not more than two years or fined not more than \$2,000.00 or both.
- Possessing 2 ounces of marijuana or 10 grams of hashish or knowingly and unlawfully cultivating more than 4 mature marijuana plants or more than 8 immature marijuana plants (Felony).
 -  Imprisoned not more than three years or fined not more than \$10,000 or both.
- Possessing more than one pound of marijuana or more than 2.8 ounces of hashish or knowingly and unlawfully cultivating more than 6 mature marijuana plants or 12 immature marijuana plants.

- → Imprisoned not more than five years or fined not more than \$10,000 or both.
- Possessing more than 10 pounds of marijuana or more than 1 pound of hashish or knowingly and unlawfully cultivating more than 12 mature marijuana plants or more than 24 immature plants.
 - → Imprisoned not more than 15 years or fined not more than \$500,000 or both.

Consuming Marijuana in A Public Place – Civil Violation: 18 VSA 4230a

- → First Offense – Not more than \$100.00.
- → Second Offense - Not more than \$200.00.
- → Third or subsequent Offense - Not more than \$500.00.

Marijuana – Possession - Under 21 years of age; Civil Violation: 18 VSA 4230b

- Possessing 1 ounce or less of marijuana or 5 grams or less of hashish or 2 mature marijuana plants or fewer or 4 immature marijuana plants or fewer.
 - → Civil violation – Referred to the Court Diversion Program
 - → If they fail to complete the Court Diversion Program a civil penalty of \$300 and 30-day license suspension for first offense, or \$600 fine and 90-day license suspension for second or subsequent offenses is assessed.

Marijuana – Dispensing Marijuana to a person Under 21 years of age; Criminal Violation: 18 VSA 4230f

- (a)(1) No one shall dispense marijuana to someone under 21 years of age or (a)(2) “knowingly enable the consumption of marijuana by a person under 21 years of age.” 18 V.S.A. § 4230f(a)(1), (2).
 - → Imprisoned not more than two years or fined not more than \$2,000 or both.
- (d) If a person violates the section (a) outlined above, and the person under 21 years of age (“while operating a motor vehicle on a public highway”) causes death or serious bodily injury to himself or herself or to another person. § 4230f(d).
 - → Imprisoned not more than five years or fined not more than \$10,000 or both.
- (e)(1) Subsections (a)-(d) of this section shall not apply to someone under 21 years of age “who dispenses marijuana to a person under 21 years of age or who knowingly enables the consumption of marijuana by a person under 21 years of age.” § 4230f(e)(1).
- (e)(2) “A person who is 18, 19, or 20 years of age who knowingly dispenses marijuana to a person who is 18, 19, or 20 years of age.” § 4230f(e)(2).
 - → Commits a civil violation and shall be referred to the Court Diversion Program.
- (e)(3) “A person 18, 19, or 20 years of age who knowingly dispenses to a person under 18 years of age who is at least three years that person’s junior . . .” § 4230f(e)(3).
 - → Imprisonment of not more than five years. See 18 V.S.A. § 4237 (“Selling or dispensing to minors; selling on school grounds”).

- (e)(4) “A person who is 19 years of age who knowingly dispenses to a person 17 year of age or a person who is 18 years of age who knowingly dispenses marijuana to a person who is 16 or 17 years of age.” § 4230f(e)(4).
 - → “Commits a misdemeanor crime” and shall be fined no more than \$500.
- (e)(5) “A person who is under 18 years of age who knowingly dispenses marijuana to another person who is under 18 years of age.” § 4230f(e)(5).
 - → “Commits a delinquent act and shall be subject to 33 VSA chapter 52.” *Id.*

Chemical Extraction Via Butane or Hexane Prohibited: 18 VSA 4230h

- “No person shall manufacture concentrated marijuana by chemical extraction or chemical synthesis using butane or hexane unless authorized as a dispensary pursuant to a registration issued by the Department of Public Safety . . .” 18 V.S.A. § 4230h(a).
 - → Imprisoned not more than two years or fined not more than \$2,000 or both. A person who violates this and causes serious bodily injury to another shall be imprisoned not more than five years or fined not more than \$5,000 or both. *Id.* § 4230h(b).

Exceptions: 18 VSA 4230i

- “A person who is convicted of a felony for selling marijuana in violation of section 4230 . . . or selling a regulated drug to minors or on school grounds in violation of section 4237 for an offense that occurred on or after July 1, 2018 and who possesses 1 ounce or less of marijuana or 5 grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows”:
 - → “[N]ot more than \$200 for a first offense”
 - → “[N]ot more than \$300 for a second offense”
 - → “[N]ot more than \$500 for a third or subsequent offense.” § 4230i(a).
- “A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2018 and who possesses any of the following”:
 - “[M]ore than 1 ounce, but not more than 2 ounces of marijuana”
 - “[M]ore than 5 grams, but not more than 10 grams of hashish; or”
 - “[N]ot more than 6 mature marijuana plants and 12 immature marijuana plants.” § 4230i(b)
 - → Misdemeanor subject to imprisonment of not more than one year or a fine of not more than \$1,000 or both.

Paraphernalia: 18 VSA 4476

- “A person who sells drug paraphernalia to a person under 18 years of age . . .” § 4476(a).
 - → “Imprisoned for not more than two years” or fined not more than \$2,000 or both. *Id.*

Motor Vehicle Operator; Consumption or Possession of Alcohol or Marijuana: 23 VSA 1134

- (a) “A person shall not consume an alcoholic beverage or marijuana while operating a motor vehicle on a public highway. As used in this subsection, the prohibition on consumption of marijuana by the operator shall extend to the operator’s consumption of secondhand smoke in the vehicle as a result of another person’s consumption of marijuana.” 23 V.S.A. § 1134(a).
 - → Civil penalty of not more than \$500.
- (b) “A person operating a motor vehicle on a public highway shall not possess any open container which contains an alcoholic beverage or marijuana in the passenger area of the motor vehicle.” 23 V.S.A. § 1134(b).
 - → Civil penalty of not more than \$200.

Motor Vehicle Passenger; Consumption or Possession of Alcohol or Marijuana: 23 VSA 1134a

- “A passenger in a motor vehicle shall not consume an alcoholic beverage or marijuana in the passenger area of any motor vehicle on a public highway.” 23 V.S.A. § 1134a(a).
 - → Civil penalty of not more than \$200 for marijuana consumption.
- “A passenger in a motor vehicle shall not possess any open container which contains an alcoholic beverage or marijuana in the passenger area of the motor vehicle.” *Id.* § 1134a(b).
 - → Civil penalty of not more than \$200 for open container of marijuana.

Using Tobacco or Marijuana in a Motor Vehicle with Child Present: 23 VSA 1134b

- (a) “A person shall not possess a lighted tobacco product or use a tobacco substitute . . . in a motor vehicle that is occupied by a child required to be properly restrained in a federally approved child passenger restraining system.” 23 V.S.A. § 1134b(a)
 - → Civil penalty of not more than \$100 and no points assessed.
- (b) “A person shall not use marijuana . . . in a motor vehicle that is occupied by a child under 18 years of age.” 23 V.S.A. § 1134b(b).
 - → Misdemeanor Offense - Fine of not more than \$500 for a first offense.
 - → Misdemeanor Offense - Fine of not more than \$750 for a second offense.
 - → Misdemeanor Offense - Fine of not more than \$1,000 for third or subsequent offense.

Marijuana and Tobacco Use prohibited at Child Care Facilities: 33 VSA 3504

- “No person shall be permitted to use marijuana . . . or to cultivate marijuana, or use tobacco products or tobacco substitutes . . . on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time.” 33 V.S.A. § 3504(a).
 - → Misdemeanor – First offense/fine of not more than \$500.
 - → Misdemeanor – Second offense/fine of not more than \$750.
 - → Misdemeanor – Third or subsequent offense/fine of not more than \$1,000.

You may read the full text of this bill on line by clicking [here](#).

The provisions discussed in this summary take effect on July 1, 2018.

Traffic Stop Data Collection

- All traffic stops shall result in either a written warning or a traffic citation.
- All traffic stops shall have a corresponding written record of traffic stop race data.
- Age and gender must be included.
- Contraband – possession of contraband shall be documented. As noted above, possession of marijuana under certain circumstances is legal in Vermont and therefore should not be seized nor should you document possession of legal drugs for purposes of roadside stop data collection.
- **Moving violation** - Choose this option if you stop a vehicle because you observe any type of moving violation, and you had no other information beforehand.
- **Externally generated stop** - Choose this option if you had little to no discretion for stopping a specific vehicle/operator; you had information from a source, or an outside agency which dictated that you make a stop of a specific vehicle or operator.
- **Investigatory stop** - In this option you have less specific information as compared to an externally generated stop. You may also have a higher degree of discretion about whether to make the stop. Choose this option if you stop a vehicle because you are investigating a crime or an incident that was previously reported and the incident is under investigation. Or, you are acting on information pertaining to crime or criminal activity. The driving force behind stopping the vehicle or operator is an investigation.
- **Suspicion of DUI** - Choose this option if you stop a vehicle because you independently observed operation consistent with an impaired driver. You have reasonable suspicion to believe the operator could be impaired based on your independent observation.
- **Vehicle equipment** - Choose this option if you stop a vehicle because you observe an issue with the vehicle's equipment.
- **Other** – not used by VSP.

DATA COLLECTED at each roadside stop:

1. RACE OF OPERATOR

- A – Asian or Pacific Islander
- B – Black
- H – Hispanic
- I – Native American or Alaskan Native
- W – White

2. REASON FOR CONTACT

- M – Moving Violation
- E – Externally generated stop
- I – Investigatory stop
- D – Suspicion of DUI
- V – Vehicle Equipment
- O – Other (not used by VSP)

3. TYPE OF SEARCH

- NS – No search conducted
- SW – Search conducted with warrant
- SPC – Consent search conducted / PC / No warrant
- SRS – Consent search conducted / reasonable suspicion

4. EVIDENCE LOCATED

- X – N/A – No Search
- C – Contraband/Evidence Found
- NC – No contraband

5. OUTCOME (most serious action taken)

- W – Warning
- T – Ticket
- A – Arrest
- AW – Arrest on warrant
- N – No action taken

YOUR SELECTIONS REFER TO THE ACTIONS TAKEN TOWARD THE OPERATOR ONLY! CHOOSE ONLY ONE (1) ITEM PER SECTION.