

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4544**

BY DELEGATES WAXMAN, STEELE, PHILLIPS, MILEY,  
QUEEN, HAMRICK, FOSTER, BIBBY, KUMP, N. BROWN AND

FAST

[Introduced January 27, 2020; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-401 and §60A-4-406 of the Code of West Virginia, 1931,  
2 as amended, all relating to possession of any controlled substance on the premises of or  
3 within 200 feet of a public library, and applying a mandatory period of incarceration prior  
4 to parole eligibility for persons 18 years old or over who are convicted of distributing a  
5 controlled substance within 200 feet of a public library.

*Be it enacted by the Legislature of West Virginia:*

#### **ARTICLE 4. OFFENSES AND PENALTIES.**

##### **§60A-4-401. Prohibited acts; penalties.**

1 (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver,  
2 or possess with intent to manufacture or deliver, a controlled substance.

3 Any person who violates this subsection with respect to:

4 (i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty  
5 of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less  
6 than one year nor more than 15 years, or fined not more than \$25,000, or both;

7 (ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and,  
8 upon conviction, may be imprisoned in the state correctional facility for not less than one year nor  
9 more than five years, or fined not more than fifteen thousand dollars, or both;

10 (iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may  
11 be imprisoned in the state correctional facility for not less than one year nor more than three years,  
12 or fined not more than \$10,000, or both;

13 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction,  
14 may be confined in jail for not less than six months nor more than one year, or fined not more  
15 than five thousand dollars, or both: *Provided*, That for offenses relating to any substance classified  
16 as Schedule V in article ten of this chapter, the penalties established in said article apply.

17 (b) Except as authorized by this act, it is unlawful for any person to create, deliver, or  
18 possess with intent to deliver, a counterfeit substance.

19 Any person who violates this subsection with respect to:

20 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty  
21 of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less  
22 than one year nor more than 15 years, or fined not more than \$25,000, or both;

23 (ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and,  
24 upon conviction, may be imprisoned in the state correctional facility for not less than one year nor  
25 more than five years, or fined not more than \$15,000, or both;

26 (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon  
27 conviction, may be imprisoned in the state correctional facility for not less than one year nor more  
28 than three years, or fined not more than ten thousand dollars, or both;

29 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon  
30 conviction, may be confined in jail for not less than six months nor more than one year, or fined  
31 not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as  
32 Schedule V in article 10 of this chapter, the penalties established in said article apply.

33 (c) It is unlawful for any person knowingly or intentionally to possess a controlled  
34 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or  
35 order of a practitioner while acting in the course of his professional practice, or except as  
36 otherwise authorized by this act. Any person who violates this subsection is guilty of a  
37 misdemeanor and, disposition may be made under ~~section four hundred seven of this article~~  
38 §60A-4-407, subject to the limitations specified in said section, or upon conviction, such person  
39 may be confined in jail not less than ninety days nor more than six months, or fined not more than  
40 one thousand dollars, or both: *Provided*, That notwithstanding any other provision of this act to  
41 the contrary, any first offense for possession of Synthetic Cannabinoids as defined by ~~subdivision~~  
42 ~~(32) subsection, (d), section 101, article 1 of this chapter~~ §60A-1-101(d)(32); 3,4-  
43 methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone  
44 as defined in ~~subsection (f), section 101, article 1 of this chapter~~ §60A-1-101(f); or less than 15

45 grams of marijuana, shall be disposed of under said section: Provided further, That possession  
 46 of any controlled substance without a valid prescription, on the premises of, or within 200 feet of  
 47 a public library, shall be strictly prohibited and subject to the full penalties set forth herein, without  
 48 exception.

49 (d) It is unlawful for any person knowingly or intentionally:

50 (1) To create, distribute or deliver, or possess with intent to distribute or deliver, an  
 51 imitation controlled substance; or

52 (2) To create, possess or sell or otherwise transfer any equipment with the intent that such  
 53 equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint,  
 54 number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled  
 55 substance, or the container or label of a counterfeit substance or an imitation controlled  
 56 substance.

57 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon  
 58 conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined  
 59 not more than five thousand dollars, or both. Any person being 18 years old or more who violates  
 60 subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled  
 61 substance to a minor child who is at least three years younger than such person is guilty of a  
 62 felony and, upon conviction, may be imprisoned in the state correctional facility for not less than  
 63 one year nor more than three years, or fined not more than \$10,000, or both.

64 (4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who  
 65 administers or dispenses a placebo.

**§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21;  
 distribution by persons 18 or over in or on, or within 1,000 feet of, school or college;  
distribution by persons 18 or over in or on, or within 200 feet of a public library;  
 increasing mandatory period of incarceration prior to parole eligibility.**

1 (a) Notwithstanding any other provision of law to the contrary, a person is ineligible for

2 parole for a period of three years if he or she is sentenced to the custody of the Commissioner of  
3 Corrections and Rehabilitation, or his or her predecessor, for service of a sentence of  
4 incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(i) of this  
5 code for distribution of a controlled substance and:

6 (1) Is 21 years of age or older at the time of the distribution upon which the conviction is  
7 based, and the person to whom the controlled substance was distributed was under the age of  
8 18 years at the time of the distribution; or

9 (2) Is 18 years of age or older and the distribution upon which the conviction is based  
10 occurred in or on, or within 1,000 feet of, the real property comprising a public or private  
11 elementary, vocational or secondary school or a public or private college, junior college or  
12 university in this state; or

13 (3) Is 18 years of age or older and the distribution upon which the conviction is based  
14 occurred in or on, or within 200 feet of, the real property comprising a public library in this state.

15 (b) Notwithstanding any other provision of law to the contrary, a person is ineligible for  
16 parole for a period of two years if he or she is sentenced to the custody of the Commissioner of  
17 Corrections and Rehabilitation, or his or her predecessor, for service of a sentence of  
18 incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(ii) of  
19 this code for distribution of a controlled substance and:

20 (1) Is 21 years of age or older at the time of the distribution upon which the conviction is  
21 based, and the person to whom the controlled substance was distributed was under the age of  
22 18 years at the time of the distribution; or

23 (2) Is 18 years of age or older and the distribution upon which the conviction is based  
24 occurred in or on, or within 1,000 feet of, the real property comprising a public or private  
25 elementary, vocational or secondary school or a public or private college, junior college or  
26 university in this state; or

27 (3) Is 18 years of age or older and the distribution upon which the conviction is based

28 occurred in or on, or within 200 feet of, the real property comprising a public library in this state.

29 (c) The existence of any fact which would make any person subject to the provisions of  
30 this section may not be considered unless the fact is clearly stated and included in the indictment  
31 or presentment by which the person is charged and is either:

32 (1) Found by the court upon a plea of guilty or nolo contendere;

33 (2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a  
34 special interrogatory for such purpose; or

35 (3) Found by the court, if the matter be tried by the court without a jury.

36 (d) Nothing in this section ~~shall be construed to limit~~ limits the sentencing alternatives  
37 made available to circuit court judges under other provisions of this code.

NOTE: The purpose of this bill is to make the provisions of the current law applicable to the possession of any controlled substance without a valid prescription on the premises of or within 200 feet of a public library, and to persons 18 years of age or older who are convicted of distribution of a controlled substance within 200 feet of public library in this state.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.