

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 502

SENATORS IHLENFELD, HARDESTY, JEFFRIES, LINDSAY,
PALUMBO, STOLLINGS, WOELFEL, BALDWIN, HAMILTON,
AND FACEMIRE, *original sponsors*

[Originating in the Committee on the Judiciary;
reported on February 17, 2020]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,
2 relating to methamphetamine; and amending criminal penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; 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 or which
5 is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a
6 state correctional facility for not less than one year nor more than 15 years, or fined not more than
7 \$25,000, or both fined and imprisoned;

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

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

14 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction
15 thereof, may be confined in jail for not less than six months nor more than one year, or fined not
16 more than \$5,000, or both fined and confined; *Provided*, That for offenses relating to any
17 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established
18 in said article apply.

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

21 Any person who violates this subsection with respect to:

22 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, and
23 methamphetamine, which for the intent of this section shall be treated as a narcotic, is guilty of a
24 felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less
25 than one year nor more than 15 years, or fined not more than \$25,000, or both fined and
26 imprisoned;

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

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

33 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon
34 conviction thereof, may be confined in jail for not less than six months nor more than one year, or
35 fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any
36 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established
37 in said article apply.

38 (c) It is unlawful for any person knowingly or intentionally to possess a controlled
39 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or
40 order of a practitioner while acting in the course of his or her professional practice, or except as
41 otherwise authorized by this act. Any person who violates this subsection is guilty of a
42 misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the
43 limitations specified in said section, or upon conviction thereof, ~~said~~ the person may be confined
44 in jail not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined
45 and confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any
46 first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this

47 code; 3,4-methylenedioxypropylamphetamine (MDA) and 3,4-methylenedioxypropylamphetamine and/or
48 mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall
49 be disposed of under §60A-4-407 of this code.

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

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

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

58 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon
59 conviction thereof, may be confined in jail for not less than six months nor more than one year, or
60 fined not more than \$5,000, or both fined and confined. Any person ~~being~~ 18 years old or more
61 who violates subdivision (1) of this subsection and ~~in doing so~~, distributes or delivers an imitation
62 controlled substance to a minor child who is at least three years younger than ~~such~~ that person
63 is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility
64 for not less than one year nor more than three years, or fined not more than \$10,000, or both
65 fined and imprisoned.

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