

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3121

By Delegate Jennings

[Introduced January 27, 2023; Referred to the
Committee on Prevention and Treatment of
Substance Abuse then the Judiciary]

1 A BILL to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §18B-11B-4 of said code; and to amend said code by adding thereto a new
 3 article, designated §60A-12-1, §60A-12-2, §60A-12-3, and §60A-12-4, all generally
 4 relating to be the "Stop Our Scourge Act of 2023" or the "SOS Act of 2023"; designating
 5 illicit fentanyl as a weapon of mass destruction in order to marshal all the resources of the
 6 State of West Virginia lawfully authorized to protect and defend the citizens of the West
 7 Virginia from crime and threats to the public health, safety, and welfare to combat the
 8 scourge of illicit fentanyl in West Virginia.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY
MANAGEMENT.**

§15-5-2.

Definitions.

1 As used in this article:

2 "Board" means the West Virginia Disaster Recovery Board created by this article;

3 "Code" means the Code of West Virginia, 1931, as amended;

4 "Community facilities" means a specific work, or improvement within this state or a specific
 5 item of equipment or tangible personal property owned or operated by any political subdivision or
 6 nonprofit corporation and used within this state to provide any essential service to the general
 7 public;

8 "Critical infrastructure" includes any systems and assets, whether physical or virtual, so
 9 vital to the state that the incapacity or destruction of such systems and assets would have a
 10 debilitating impact on security, state economic security, state public health or safety, or any
 11 combination of those matters.

12 "Disaster" means the occurrence or imminent threat of widespread or severe damage,

13 injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including
14 weapons of mass destruction, including, but not limited to, any substance defined as a weapon of
15 mass destruction in the Code of West Virginia, fire, flood, earthquake, wind, snow, storm, chemical
16 or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought,
17 infestation or other public calamity requiring emergency action;

18 "Disaster recovery activities" means activities undertaken prior to, during or following a
19 disaster to provide, or to participate in the provision of, critical infrastructure, emergency services,
20 temporary housing, residential housing, essential business activities, and community facilities;

21 "Emergency services" means the preparation for and the carrying out of all emergency
22 functions, other than functions for which military forces are primarily responsible, to protect,
23 respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and
24 damage resulting from disasters or other event caused by flooding, terrorism, enemy attack,
25 sabotage, or other natural or other man-made causes. These functions include, without limitation,
26 critical infrastructure services, firefighting services, police services, medical and health services,
27 communications, emergency telecommunications, radiological, chemical, and other special
28 weapons defense, evacuation of persons from stricken areas, emergency welfare services,
29 emergency transportation, existing or properly assigned functions of plant protection, temporary
30 restoration of public utility services and other functions related to the health, safety, and welfare of
31 the citizens of this state, together with all other activities necessary or incidental to the preparation
32 for and carrying out of these functions. Disaster includes the imminent threat of disaster as well as
33 its occurrence and any power or authority exercisable on account of a disaster that may be
34 exercised during the period when there is an imminent threat;

35 "Essential business activities" means a specific work or improvement within this state or a
36 specific item of equipment or tangible personal property used within this state by any person to
37 provide any essential goods or critical infrastructure services determined by the authority to be
38 necessary for continued operations during a disaster, state of emergency, or state of

39 preparedness, and for recovery from a disaster;

40 "Essential workers" means employees or contractors that fall under the definition of
41 essential business activities during a disaster, state of emergency, or state of preparedness.

42 "Local organization for emergency services" means an organization created in accordance
43 with the provisions of this article by state or local authority to perform local emergency services
44 function;

45 "Mobile support unit" means an organization for emergency services created in
46 accordance with the provisions of this article by state or local authority to be dispatched by the
47 Governor to supplement local organizations for emergency services in a stricken area;

48 "Person" means any individual, corporation, voluntary organization or entity, partnership,
49 firm, or other association, organization, or entity organized or existing under the laws of this or any
50 other state or country;

51 "Political subdivision" means any county or municipal corporation in this state;

52 "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this
53 article;

54 "Residential housing" means a specific work or improvement within this state undertaken
55 primarily to provide dwelling accommodations, including the acquisition, construction or
56 rehabilitation of land, buildings and improvements thereto, for residential housing, including, but
57 not limited to, facilities for temporary housing and emergency housing, and any other nonhousing
58 facilities that are incidental or appurtenant thereto;

59 "Secretary" means the Secretary of the West Virginia Department of Military Affairs and
60 Public Safety; and

61 "Temporary housing" means a specific work or improvement within this state undertaken
62 primarily to provide dwelling accommodations, including the acquisition, construction or
63 rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or
64 housing for victims of a disaster and such other nonhousing facilities that are incidental or

65 appurtenant thereto.

66 "Weapon of Mass Destruction" means a nuclear, radiological, chemical, biological, or other
 67 device that is intended to harm a large number of people, and/or a nuclear, radiological, chemical,
 68 biological, or other substance intentionally sold or introduced into circulation among the population
 69 that is capable of inducing individual fatality from exposure at a dose of two milligrams (0.002
 70 grams) or lower: *Provided*, That any substance legally dispensed to a prescribed patient from a
 71 licensed physician or pharmacist and used as prescribed shall be exempt from this definition.

CHAPTER 18. EDUCATION.

ARTICLE 11B. WEST VIRGINIA POISON CENTER.

§18B-11B-4. Center responsibilities.

1 The center shall provide:

2 (1) Twenty-four hour, seven days a week emergency telephone management and
 3 treatment referral of victims of poisoning to include determining whether treatment can be
 4 accomplished at the scene of the incident or transport to an emergency treatment or other facility
 5 is required and carrying out telephone follow-up to families and other individuals to assure that
 6 adequate care is provided;

7 (2) Emergency telephone treatment recommendations for all types of poisonings, chemical
 8 exposures, drug overdoses and exposure to weapons of mass destruction. This information shall
 9 be provided to medical and nonmedical providers;

10 (3) Telephone follow-up for hospitalized and nonhospitalized patients to assess progress
 11 and recommend additional treatment as necessary;

12 (4) Surveillance of human poison exposures. This includes those related chemicals, drugs,
 13 biologicals and weapons of mass destruction, including, but not limited to, any substance defined
 14 as a weapon of mass destruction in of the Code of West Virginia;

15 (5) Community education in poison prevention; and

16 (6) Education in the recognition and management of poisonings for health care providers.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

**ARTICLE 12. ILLICIT FENTANYL DESIGNATED A WEAPON OF MASS
DESTRUCTION.**

§60A-12-1. Short Title.

1 This article may be cited as the "Stop Our Scourge Act of 2023" or the "SOS Act of 2023".

§60A-12-2. Findings.

1 (a) The West Virginia Legislature finds the following:

2 (1) The number of annual drug overdose deaths in the United States has quintupled since
3 1999.

4 (2) According to the U.S. Centers for Disease Control and Prevention, deaths involving
5 illicit fentanyl are on the rise, and the number of overdose deaths involving synthetic opioids in
6 2020 was more than 18 times the number in 2013.

7 (3) The U.S. Centers for Disease Control and Prevention states that in 2020 more than
8 56,000 people died from overdoses involving synthetic opioids (other than methadone) in the
9 United States, accounting for over 82 percent of all opioid-involved deaths.

10 (4) According to the National Center for Health Statistics, the age-adjusted rate of drug
11 overdose deaths involving synthetic opioids other than methadone (such as fentanyl) increased
12 56 percent, from 11.4 in 2019 to 17.8 in 2020 per 100,000 standard population.

13 (5) The Centers for Disease Control and Prevention finds that reports on increases in
14 synthetic opioid-involved deaths "are being driven by increases in fentanyl-involved overdose
15 deaths, and the source of the fentanyl is more likely to be illicitly manufactured than
16 pharmaceutical".

17 (6) In August 2021, the U.S.-China Economic and Security Review Commission published
18 an issue brief noting that, in response to China's May 2019 fentanyl scheduling announcements,

19 "Chinese illegal fentanyl producers began seeking new ways to evade authorities, including
20 developing new fentanyl precursors, working with traffickers in other countries, and using
21 technology to avoid detection".

22 (7) According to the U.S. Drug Enforcement Agency, fentanyl is being mixed with other
23 illicit drugs to increase the potency of the drug, sold as powders and nasal spray, and increasingly
24 pressed into pills made to look like legitimate prescription opioids.

25 (8) In August 2022, Dr. Rahul Gupta, Director of the Office of National Drug Control Policy,
26 wrote, "While clandestinely produced drugs such as fentanyl hardly ever leave China in their final
27 form, precursor chemicals for these drugs often are imported by criminals from China to Mexico,
28 where lethal synthetic drugs are produced and trafficked to countries across the globe, including
29 the U.S.".

30 (9) In fiscal year 2022, U.S. Customs and Border Protection seized 12,900 pounds of illicit
31 fentanyl, which was primarily manufactured in foreign laboratories and smuggled into the United
32 States through Mexico--a sufficient quantity to kill over 2.9 billion people.

33 (10) Current policies to counter the continued proliferation of illicit fentanyl have been
34 shown to be inadequate at protecting the Nation's communities.

§60A-12-3. Designation of Fentanyl as a Weapon of Mass Destruction.

1 (a) The West Virginia Legislature designates any amount of illicit fentanyl capable of
2 inducing fatality as defined in §15-5-2 of this code as a weapon of mass destruction for purposes
3 of all applicable offenses and penalties and enforcement under chapter 60A of the Code of West
4 Virginia and all applicable crimes and punishments under chapter 61 of the Code of West Virginia.

5 (b) Definitions.

6 The term "illicit fentanyl" means fentanyl and any analogue or precursor thereof that is
7 manufactured, distributed, or dispensed, or possessed with intent to manufacture, distribute, or
8 dispense, in violation of any applicable state or federal laws, including but not limited to Chapter
9 60A of this code, The Uniform Controlled Substances Act, as well as section 401, 406, or 416 of

10 the federal Controlled Substances Act (21 U.S.C. 841, 846, 856).

11 The term "weapon of mass destruction" shall have the same meaning as set forth in §15-5-
12 2 of this code.

§60A-12-4. Assessment Regarding Illicit Fentanyl.

1 (a) The Secretary of Homeland Security, in consultation with the heads of such other state
2 agencies to include the Superintendent of the State Police and the Secretary of the Department of
3 Health and Human Resources, shall conduct an assessment of the following:

4 (1) The extent of the presence of foreign and domestic manufactured illicit fentanyl within
5 the State of West Virginia.

6 (2) The tools and capabilities across West Virginia agencies to address trafficking of illicit
7 fentanyl.

8 (3) How coordination of state and federal efforts to address such trafficking can be
9 improved, including identification of duplicative state and federal efforts.

10 (4) Illicit fentanyl being trafficked into West Virginia, directly or indirectly, with an origin from
11 Mexico, including the purity, formulation, and weight of the illicit fentanyl.

12 (b) Timing, report:

13 Not later than 60 days prior to the Regular Legislative Session first following after the date
14 of enactment of this article, and not later than 60 days prior to each Regular Legislative Session
15 thereafter, the Secretary of Homeland Security in conjunction with the Superintendent of the State
16 Police and the Secretary of the Department of Health and Human Resources shall--

17 (1) Complete the assessment required by subsection §60A-12-4(a); and

18 (2) Submit a report addressed to the Governor, the President of the Senate and the
19 Speaker of the House on the results of such assessment.

NOTE: The purpose of this bill is to designate illicit fentanyl a weapon of mass destruction in order to marshal all the resources of the State of West Virginia lawfully authorized to protect and defend the citizens of West Virginia from crime and threats to the public health, safety

and welfare to combat the scourge of illicit fentanyl in West Virginia.

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