

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 541

By Senators Helton and Fuller

[Introduced February 19, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,
2 relating to sentencing guidelines for conviction of distribution of fentanyl.

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, or
2 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 is
5 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state
6 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: *Provided*, That any person who violates this section
8 knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in
9 combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a
10 state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

11 (ii) A person is ineligible for parole during

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

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

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

said article apply.

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

Any person who violates this subsection with respect to:

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

A person is ineligible for parole for a period of five years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(i) of this code for distribution of a fentanyl.

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

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

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

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as

otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, the person may be confined in jail not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypyrovalerone (MPVD) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

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

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

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

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

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

- 74 (e) It is unlawful for any person knowingly or intentionally:
- 75 (1) To adulterate another controlled substance using fentanyl as an adulterant;
- 76 (2) To create a counterfeit substance or imitation controlled substance using fentanyl; or
- 77 (3) To cause the adulteration or counterfeiting or imitation of another controlled substance
- 78 using fentanyl.
- 79 (4) Any person who violates this subsection is guilty of a felony and, upon conviction
- 80 thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15
- 81 years, or fined not more than \$50,000, or both fined and imprisoned.
- 82 (5) For purposes of this section:
- 83 (i) A controlled substance has been adulterated if fentanyl has been mixed or packed with
- 84 it; and
- 85 (ii) Counterfeit substances and imitation controlled substances are further defined in §60A-
- 86 1-101 of this code.

NOTE: The purpose of this bill is to revise the sentencing guidelines for conviction of distribution of fentanyl.

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