

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4258

BY DELEGATES BYRD, GUTHRIE, ROWE, ROHRBACH,
FLUHARTY, REYNOLDS, MARCUM, SHAFFER, P. SMITH,
FLEISCHAUER AND STANSBURY

[Introduced January 25, 2016; Referred
to the Select Committee on Prevention and Treatment
of Substance Abuse then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new section,
2 designated §15-9-4a; to amend and reenact §16-1-4 of said code; to amend and reenact
3 §18-2-7b of said code; to amend and reenact §60A-4-401; to amend said code by adding
4 thereto a new section, designated §60A-4-414; and to amend said code by adding thereto
5 a new section, designated §61-2-4a, all relating to substance abuse; mandating studies
6 by the governor's committee on crime, delinquency and correction on reforms to state
7 drug sentencing laws; requiring said committee to coordinate school education program
8 by law enforcement officers; authorizing the state department of health to promulgate rules
9 regulating the exchange of syringes and providing immunity for certain actions relating
10 thereto; directing the state board of education to requiring county boards to provide
11 substance abuse training education; directing state board of education to coordinate its
12 activities with state law enforcement agencies; providing a penalty enhancement for use
13 of a firearm during manufacture or distribution of controlled or imitation controlled
14 substance; providing that an attempt or conspiracy to attempt to distribute controlled
15 substances or imitation controlled substance is the same as the actual act; and
16 establishing new criminal penalty for causing death by distributing a controlled substance.

Be it enacted by the Legislature of West Virginia:

1 The Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §15-9-4a; that §16-1-4 of said code be amended and reenacted; that
3 §18-2-7b of said code be amended and reenacted; that §60A-4-401 of said code be amended
4 and reenacted; that said code be amended by adding thereto a new section, designated
5 §60A-4-414; and that said code be amended by adding thereto a new section, designated
6 §61-2-4a, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND

CORRECTION.

§15-9-4a. Sentencing study for drug offenders; promotion of student education about alcohol, drug abuse and police practices.

1 (a) The Governor’s committee on crime, delinquency and correction shall conduct
2 comprehensive research and recommend to the Legislature by January 1, 2017, reforms to our
3 criminal sentencing laws and procedures relating to:

4 (1) Revision of nonviolent drug offenses for individuals found to have committed crimes
5 as a result of their addictions to or the illegal use of drugs. The committee shall focus on
6 recommendations to the legislature for shifting criminal penalties of our laws away from
7 incarceration, focusing on interdiction, counseling and rehabilitation, to address the underlying
8 causes of addition of these individuals;

9 (2) The committee shall also conduct a comprehensive review and study of national and
10 local trends and programs that have proven successful in addressing and overcoming addiction
11 and identifying the nature of the causes of addiction and criminal behavior related to drug
12 addiction. The committee shall provide recommendations to the legislature for the creation of
13 programs and establishment of facilities in the state that provide how the state can best shift its
14 expenditures in a revenue neutral fashion away from incarceration to interdiction programs,
15 facilities and related services; and

16 (3) The committee shall study and make recommendations to the Legislature relating to
17 criminal sentencing statutes relating to controlled substance distribution.

18 (b) The Governor’s committee on crime, delinquency and correction shall facilitate a
19 program between state law-enforcement personnel and the State Board of Education and county
20 school boards to coordinate activities established in section seven-b, article two, chapter eighteen
21 of this code, directing law-enforcement agencies periodically providing opportunities for age
22 appropriate student education on law enforcement practices and relay the experiences of law-
23 enforcement officers and others on the impacts of illegal alcohol and drug use. This program is to

24 be designed to facilitate understanding and appreciation for the risks of illegal alcohol and drug
25 use and likely actions by law-enforcement officers when conducting investigations. The instruction
26 is to include principles of law enforcement criminal investigations and how to appropriately
27 respond to an officer during a vehicular stop or criminal investigation, to promote understanding
28 of students on the risks to and duties of law-enforcement officers, and how to appropriately
29 interact with law-enforcement officers during these circumstances, including problematic or
30 dangerous actions or behaviors that could result in detention or arrest.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with ~~the provisions of~~ article three,
2 chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of
3 this chapter. The secretary may appoint or designate advisory councils of professionals in the
4 areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental
5 health and intellectual disability centers and any other areas necessary to advise the secretary
6 on rules.

7 (b) The rules may include, but are not limited to, the regulation of:

8 (1) Land usage endangering the public health: *Provided*, That no rules may be
9 promulgated or enforced restricting the subdivision or development of any parcel of land within
10 which the individual tracts, lots or parcels exceed two acres each in total surface area and which
11 individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet
12 even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total
13 surface area, and which tracts are sold, leased or utilized only as single-family dwelling units.
14 Notwithstanding the provisions of this subsection, nothing in this section may be construed to
15 abate the authority of the department to:

16 (A) Restrict the subdivision or development of a tract for any more intense or higher density
17 occupancy than a single-family dwelling unit;

18 (B) Propose or enforce rules applicable to single-family dwelling units for single-family
19 dwelling unit sanitary sewerage disposal systems; or

20 (C) Restrict any subdivision or development which might endanger the public health, the
21 sanitary condition of streams or sources of water supply;

22 (2) The sanitary condition of all institutions and schools, whether public or private, public
23 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open
24 to the general public and inviting public patronage or public assembly, or tendering to the public
25 any item for human consumption and places where trades or industries are conducted;

26 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources
27 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel
28 connected with any of those facilities, without regard to whether the supplies or systems are
29 publicly or privately owned; and the design of all water systems, plumbing systems, sewerage
30 systems, sewage treatment plants, excreta disposal methods and swimming pools in this state,
31 whether publicly or privately owned;

32 (4) Safe drinking water, including:

33 (A) The maximum contaminant levels to which all public water systems must conform in
34 order to prevent adverse effects on the health of individuals and, if appropriate, treatment
35 techniques that reduce the contaminant or contaminants to a level which will not adversely affect
36 the health of the consumer. The rule shall contain provisions to protect and prevent contamination
37 of wellheads and well fields used by public water supplies so that contaminants do not reach a
38 level that would adversely affect the health of the consumer;

39 (B) The minimum requirements for: Sampling and testing; system operation; public
40 notification by a public water system on being granted a variance or exemption or upon failure to
41 comply with specific requirements of this section and rules promulgated under this section; record

42 keeping; laboratory certification; as well as procedures and conditions for granting variances and
43 exemptions to public water systems from state public water systems rules; and

44 (C) The requirements covering the production and distribution of bottled drinking water
45 and may establish requirements governing the taste, odor, appearance and other consumer
46 acceptability parameters of drinking water;

47 (5) Food and drug standards, including cleanliness, proscription of additives, proscription
48 of sale and other requirements in accordance with article seven of this chapter as are necessary
49 to protect the health of the citizens of this state;

50 (6) The training and examination requirements for emergency medical service attendants
51 and emergency medical care technician- paramedics; the designation of the health care facilities,
52 health care services and the industries and occupations in the state that must have emergency
53 medical service attendants and emergency medical care technician-paramedics employed and
54 the availability, communications and equipment requirements with respect to emergency medical
55 service attendants and to emergency medical care technician-paramedics. Any regulation of
56 emergency medical service attendants and emergency medical care technician- paramedics may
57 not exceed the provisions of article four-c of this chapter;

58 (7) The health and sanitary conditions of establishments commonly referred to as bed and
59 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment
60 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may
61 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer
62 rooms to install a restaurant-style or commercial food service facility. The secretary may not
63 require an owner of a bed and breakfast providing sleeping accommodations of more than six
64 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast
65 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

66 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,
67 laboratory service fees, environmental health service fees, health facility fees and permit fees;

68 (9) The collection of data on health status, the health system and the costs of health care;

69 (10) Opioid treatment programs duly licensed and operating under the requirements of
70 chapter twenty-seven of this code.

71 (A) The Health Care Authority shall develop new certificate of need standards, pursuant
72 to the provisions of article two-d of this chapter, that are specific for opioid treatment program
73 facilities.

74 (B) No applications for a certificate of need for opioid treatment programs may be
75 approved by the Health Care Authority as of the effective date of the 2007 amendments to this
76 subsection.

77 (C) There is a moratorium on the licensure of new opioid treatment programs that do not
78 have a certificate of need as of the effective date of the 2007 amendments to this subsection,
79 which shall continue until the Legislature determines that there is a necessity for additional opioid
80 treatment facilities in West Virginia.

81 (D) The secretary shall file revised emergency rules with the Secretary of State to regulate
82 opioid treatment programs in compliance with the provisions of this section. Any opioid treatment
83 program facility that has received a certificate of need pursuant to article two-d, of this chapter by
84 the Health Care Authority shall be permitted to proceed to license and operate the facility.

85 (E) All existing opioid treatment programs shall be subject to monitoring by the secretary.
86 All staff working or volunteering at opioid treatment programs shall complete the minimum
87 education, reporting and safety training criteria established by the secretary. All existing opioid
88 treatment programs shall be in compliance within one hundred eighty days of the effective date
89 of the revised emergency rules as required herein. The revised emergency rules shall provide at
90 a minimum:

91 (i) That the initial assessment prior to admission for entry into the opioid treatment program
92 shall include an initial drug test to determine whether an individual is either opioid addicted or
93 presently receiving methadone for an opioid addiction from another opioid treatment program.

94 (ii) The patient may be admitted to the opioid treatment program if there is a positive test
95 for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all
96 other criteria set forth in the rule for admission into an opioid treatment program are met.
97 Admission to the program may be allowed to the following groups with a high risk of relapse
98 without the necessity of a positive test or the presence of objective symptoms: Pregnant women
99 with a history of opioid abuse, prisoners or parolees recently released from correctional facilities,
100 former clinic patients who have successfully completed treatment but who believe themselves to
101 be at risk of imminent relapse and HIV patients with a history of intravenous drug use.

102 (iii) That within seven days of the admission of a patient, the opioid treatment program
103 shall complete an initial assessment and an initial plan of care.

104 (iv) That within thirty days after admission of a patient, the opioid treatment program shall
105 develop an individualized treatment plan of care and attach the plan to the patient's chart no later
106 than five days after the plan is developed. The opioid treatment program shall follow guidelines
107 established by a nationally recognized authority approved by the secretary and include a recovery
108 model in the individualized treatment plan of care. The treatment plan is to reflect that
109 detoxification is an option for treatment and supported by the program; that under the
110 detoxification protocol the strength of maintenance doses of methadone should decrease over
111 time, the treatment should be limited to a defined period of time, and participants are required to
112 work toward a drug-free lifestyle.

113 (v) That each opioid treatment program shall report and provide statistics to the
114 Department of Health and Human Resources at least semiannually which includes the total
115 number of patients; the number of patients who have been continually receiving methadone
116 treatment in excess of two years, including the total number of months of treatment for each such
117 patient; the state residency of each patient; the number of patients discharged from the program,
118 including the total months in the treatment program prior to discharge and whether the discharge
119 was for:

- 120 (A) Termination or disqualification;
- 121 (B) Completion of a program of detoxification;
- 122 (C) Voluntary withdrawal prior to completion of all requirements of detoxification as
123 determined by the opioid treatment program;
- 124 (D) Successful completion of the individualized treatment care plan; or
- 125 (E) An unexplained reason.
- 126 (vi) That random drug testing of all patients shall be conducted during the course of
127 treatment at least monthly. For purposes of these rules, Arandom drug testing@ means that each
128 patient of an opioid treatment program facility has a statistically equal chance of being selected
129 for testing at random and at unscheduled times. Any refusal to participate in a random drug test
130 shall be considered a positive test. Nothing contained in this section or the legislative rules
131 promulgated in conformity herewith will preclude any opioid treatment program from administering
132 such additional drug tests as determined necessary by the opioid treatment program.
- 133 (vii) That all random drug tests conducted by an opioid treatment program shall, at a
134 minimum, test for the following:
- 135 (A) Opiates, including oxycodone at common levels of dosing;
- 136 (B) Methadone and any other medication used by the program as an intervention;
- 137 (C) Benzodiazepine including diazepam, lorazepan, clonazepam and alprazolam;
- 138 (D) Cocaine;
- 139 (E) Methamphetamine or amphetamine;
- 140 (F) Tetrahydrocannabinol, delta-9-tetrahydrocannabinol or dronabinol or other similar
141 substances; or
- 142 (G) Other drugs determined by community standards, regional variation or clinical
143 indication.
- 144 (viii) That a positive drug test is a test that results in the presence of any drug or substance
145 listed in this schedule and any other drug or substance prohibited by the opioid treatment program.

146 A positive drug test result after the first six months in an opioid treatment program shall result in
147 the following:

148 (A) Upon the first positive drug test result, the opioid treatment program shall:

149 (1) Provide mandatory and documented weekly counseling of no less than thirty minutes
150 to the patient, which shall include weekly meetings with a counselor who is licensed, certified or
151 enrolled in the process of obtaining licensure or certification in compliance with the rules and on
152 staff at the opioid treatment program;

153 (2) Immediately revoke the take home methadone privilege for a minimum of thirty days;
154 and

155 (B) Upon a second positive drug test result within six months of a previous positive drug
156 test result, the opioid treatment program shall:

157 (1) Provide mandatory and documented weekly counseling of no less than thirty minutes,
158 which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the
159 process of obtaining licensure or certification in compliance with the rules and on staff at the opioid
160 treatment program;

161 (2) Immediately revoke the take-home methadone privilege for a minimum of sixty days;
162 and

163 (3) Provide mandatory documented treatment team meetings with the patient.

164 (C) Upon a third positive drug test result within a period of six months the opioid treatment
165 program shall:

166 (1) Provide mandatory and documented weekly counseling of no less than thirty minutes,
167 which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the
168 process of obtaining licensure or certification in compliance with the rules and on staff at the opioid
169 treatment program;

170 (2) Immediately revoke the take-home methadone privilege for a minimum of one hundred
171 twenty days; and

172 (3) Provide mandatory and documented treatment team meetings with the patient which
173 will include, at a minimum: The need for continuing treatment; a discussion of other treatment
174 alternatives; and the execution of a contract with the patient advising the patient of discharge for
175 continued positive drug tests.

176 (D) Upon a fourth positive drug test within a six-month period, the patient shall be
177 immediately discharged from the opioid treatment program or, at the option of the patient, shall
178 immediately be provided the opportunity to participate in a twenty- one day detoxification plan,
179 followed by immediate discharge from the opioid treatment program: *Provided*, That testing
180 positive solely for tetrahydrocannabinol, delta-9-tetrahydrocannabinol or dronabinol or similar
181 substances shall not serve as a basis for discharge from the program.

182 (ix) That the opioid treatment program must report and provide statistics to the Department
183 of Health and Human Resources demonstrating compliance with the random drug test rules,
184 including:

185 (A) Confirmation that the random drug tests were truly random in regard to both the
186 patients tested and to the times random drug tests were administered by lottery or some other
187 objective standard so as not to prejudice or protect any particular patient;

188 (B) Confirmation that the random drug tests were performed at least monthly for all
189 program participants;

190 (C) The total number and the number of positive results; and

191 (D) The number of expulsions from the program.

192 (x) That all opioid treatment facilities be open for business seven days per week; however,
193 the opioid treatment center may be closed for eight holidays and two training days per year. During
194 all operating hours, every opioid treatment program shall have a health care professional as
195 defined by rule promulgated by the secretary actively licensed in this state present and on duty at
196 the treatment center and a physician actively licensed in this state available for consultation.

197 (xi) That the Office of Health Facility Licensure and Certification develop policies and

198 procedures in conjunction with the Board of Pharmacy that will allow physicians treating patients
199 through an opioid treatment program access to the Controlled Substances Monitoring Program
200 database maintained by the Board of Pharmacy at the patient=s intake, before administration of
201 methadone or other treatment in an opioid treatment program, after the initial thirty days of
202 treatment, prior to any take-home medication being granted, after any positive drug test, and at
203 each ninety-day treatment review to ensure the patient is not seeking prescription medication
204 from multiple sources. The results obtained from the Controlled Substances Monitoring Program
205 database shall be maintained with the patient records.

206 (xii) That each opioid treatment program shall establish a peer review committee, with at
207 least one physician member, to review whether the program is following guidelines established
208 by a nationally recognized authority approved by the secretary. The secretary shall prescribe the
209 procedure for evaluation by the peer review. Each opioid treatment program shall submit a report
210 of the peer review results to the secretary on a quarterly basis.

211 (xiii) The secretary shall propose a rule for legislative approval in accordance with ~~the~~
212 ~~provisions of~~ article three, chapter twenty-nine-a of this code for the distribution of state aid to
213 local health departments and basic public health services funds.

214 The rule shall include the following provisions:

215 Base allocation amount for each county;

216 Establishment and administration of an emergency fund of no more than two percent of
217 the total annual funds of which unused amounts are to be distributed back to local boards of health
218 at the end of each fiscal year;

219 A calculation of funds utilized for state support of local health departments;

220 Distribution of remaining funds on a per capita weighted population approach which
221 factors coefficients for poverty, health status, population density and health department
222 interventions for each county and a coefficient which encourages counties to merge in the
223 provision of public health services;

224 A hold-harmless provision to provide that each local health department receives no less
225 in state support for a period of four years beginning in the 2009 budget year.

226 The Legislature finds that an emergency exists and, therefore, the secretary shall file an
227 emergency rule to implement the provisions of this section pursuant to the provisions of section
228 fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior
229 approval of the Legislative Oversight Commission on Health and Human Resources
230 Accountability prior to filing with the Secretary of State.

231 (xiv) A syringe exchange program operated by a local health department. A local health
232 department, including the local health officer, that operates a syringe exchange program in
233 compliance with a legislative rule promulgated in accordance with this subdivision is immune from
234 any civil or criminal liability arising out of any act or omission resulting from the syringe exchange
235 program unless the act or omission was the result of gross negligence or willful misconduct. The
236 Legislature finds that for the purposes of section fifteen, article three, chapter twenty-nine-a of
237 this code, an emergency exists requiring the promulgation of an emergency rule to preserve the
238 public peace, health, safety or welfare and to prevent substantial harm to the public interest.

239 ~~(xiv)~~ (xv) Other health-related matters which the department is authorized to supervise
240 and for which the rule-making authority has not been otherwise assigned.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7b. Programs in drug prevention and violence reduction.

1 (a) In order for the schools to become healthy learning environments and to provide a
2 strong defense against drug use and violence, the state Board of Education shall prescribe
3 programs within the existing health and physical education program which teach resistance and
4 life skills to counteract societal and peer pressure to use drugs, alcohol and tobacco, and shall
5 include counselors, teachers and staff in full implementation of the program. The board shall also

6 prescribe programs to coordinate violence reduction efforts in schools and between schools and
7 their communities and to train students, teachers, counselors and staff in conflict resolution skills.
8 The program shall be comprehensive, interdisciplinary and shall begin in elementary school. The
9 state board shall report to the Legislative Oversight Commission on education accountability on
10 the status of the programs no later than July 1, 1995.

1 (b) No later than the start of the 2016-2017 school year, the State Board of Education shall
2 require each county board of education to implement a comprehensive drug awareness and
3 prevention program that mandates students in grades K through 12 to receive instruction
4 regarding the dangers of substance abuse. The purpose of the drug awareness and prevention
5 program is to:

6 (1) Keep students from illegally using alcohol, tobacco or other drugs;

7 (2) Reduce or eliminate the incidence and prevalence of student alcohol, tobacco and
8 other drug abuse;

9 (3) Reduce the factors that place students at risk with alcohol, tobacco or other drugs
10 through school and community based planning processes;

11 (4) Contribute to the development of school environments and alternative activities that
12 are alcohol, tobacco and drug-free;

13 (5) Increase the knowledge and skills of students, staff and community members for
14 avoiding the harmful effects of alcohol, tobacco, drug-use and blood borne pathogens; and

15 (6) Actively involve staff, students, parents, and other community members in the
16 development and implementation of the drug awareness and prevention program plans.

17 (c) The state board shall coordinate the directives of subsection (b) this section with
18 educators, drug rehabilitation specialists and law-enforcement agencies to periodically provide
19 opportunities for age appropriate student education on their experiences on the impacts of illegal
20 alcohol and drug use. Further, the program is to facilitate understanding and appreciation for the
21 risks to, duties of, and likely actions by law-enforcement officers when conducting investigations,

22 instruction is to include how to respond to an officer during a vehicular or other stop or police
23 interaction, including problematic or dangerous actions and behaviors that could result in a person
24 being detained or arrested.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCE ACT.

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, 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 fifteen 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 \$15,000, 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 \$5,000, or both: *Provided*, That for offenses relating to any substance classified as Schedule
16 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 fifteen 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 \$10,000, 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 ten 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 subject to the limitations specified in said section, or upon conviction, such person may be
39 confined in jail not less than ninety days nor more than six months, or fined not more than \$1,000,
40 or both: *Provided*, That notwithstanding any other provision of this act to the contrary, any first
41 offense for possession of Synthetic Cannabinoids as defined by subdivision (32) subsection, (d),
42 section 101, article 1 of this chapter; 3,4-methylenedioxypropylone (MPVD) and 3,4-
43 methylenedioxypropylone and/or mephedrone as defined in subsection (f), section 101, article
44 1 of this chapter; or less than 15 grams of marijuana, shall be disposed of under said section.

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

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

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

53 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon
54 conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined
55 not more than \$5,000, or both. Any person being eighteen years old or more who violates
56 subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled
57 substance to a minor child who is at least three years younger than such person is guilty of a
58 felony and, upon conviction, may be imprisoned in the state correctional facility for not less than
59 one year nor more than three years, or fined not more than \$10,000, or both.

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

1 (e) If any person who possesses with the intent to deliver, manufactures or delivers a
2 controlled substance or imitation controlled substance while using or possessing a firearm, upon
3 a finding by the court that the firearm was used or possessed in connection with the possession
4 with the intent to deliver, manufacture or delivery of such substance, the court shall sentence the
5 person to serve a minimum of one third of the maximum sentence the person is eligible to serve
6 for such offense.

§60A-4-414. Conspiracy to distribute.

1 Any person who attempts or conspires to commit any offense defined in this article is
2 subject to the same penalties as those prescribed for the same offense which was the object of
3 to the attempt or subject conspiracy.

CHAPTER 61. CRIMES & THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-4a. Causing death by distribution of controlled substance.

- 1 Any person who, without intent to cause death, causes the death of a person by, directly
2 or indirectly, distributing a controlled substance as defined in section one hundred one, article
3 one, chapter sixty-a of this code, is guilty of involuntary manslaughter.

NOTE: The purpose of this bill is to address substance abuse and facilitate the reduction thereof; mandating the governor’s committee on crime, delinquency and correction on reforms to conduct a study of state drug sentencing laws; requiring the committee to coordinate school education program with law-enforcement officers; authorizing the Department of Health to promulgate rules regulating the exchange of syringes, and providing immunity for certain actions relating thereto; directing the state board of education to requiring each county board to provide substance abuse training education; directing state board of education to coordinate its activities with law enforcement and drug rehabilitation agencies; providing a penalty enhancement for us of a firearm during manufacture or distribution of controlled or imitation controlled substance; providing that an attempt or conspiracy to attempt to distribute controlled substances is the same as the actual act; and establishing new criminal penalty for causing death by distributing a controlled substance to that person.

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