

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 196

By Senator Deeds

[Introduced February 12, 2025; referred
to the Committee on the Judiciary]

A BILL to amend and reenact §60A-4-401, §60A-4-409, §60A-4-414, and §60A-4-416, relating to controlled substances violations; increasing sentences for certain controlled substances offenses; making certain offenses ineligible for suspension or probation, or alternative sentencing; making possession of Schedule I and II narcotics and methamphetamine a felony; expressing legislative intent; authorizing reduction from felony to misdemeanor under certain circumstances; declaring that minimum period of 10 years' incarceration for the offense of drug delivery death; requiring inert substances mixed with controlled substances to be considered a controlled substance for purposes of weight measurement; setting forth method for measurement where more than one controlled substance is in a mixture; and modifying sentences for certain offenses.

ARTICLE 4. OFFENSES AND PENALTIES.

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

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

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than ~~one year~~ three years nor more than 15 years, or fined not more than ~~\$25,000~~ \$50,000, or both fined and imprisoned; ~~Provided, That any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned~~

(ii) Any other controlled 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 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 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.~~

~~(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;~~

~~(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~~

(b) Notwithstanding the provisions of subsection (a) of this section, any person who willfully

manufactures, delivers, or possesses with the intent to manufacture or deliver one kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, 50 grams or more of methamphetamine, or five grams or more of fentanyl, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than 10 nor more than 30 years, or fined not more than \$100,000, or both fined and imprisoned.

(c)(1) 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.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, possession of a controlled substance classified in Schedule I or II which is a narcotic drug or which is methamphetamine is a felony, and upon conviction, the person shall be imprisoned in a state correctional facility for not less than one year nor more than five years: *Provided*, That a person charged pursuant to this subdivision may, upon successful completion of a court ordered or approved drug treatment program, have his or her offense revert to a misdemeanor with disposition under subdivision (1) of this subsection: *Provided, however*, That the modification in law effected by the amendment to this subsection enacted during the 2025 Regular Session of the

Legislature is expressly designed to assist in getting persons unlawfully using controlled substances in Schedules I and II which are narcotic drugs or methamphetamine in obtaining treatment for any substance abuse issue they may have: *Provided further*, That the legislature recommends that courts and prosecuting attorneys, where possible, avail themselves of the full panoply of sentencing alternatives available in code, including but not limited to the provisions of §62-11B-1 *et seq.*, §62-11C-1 *et seq.*, §62-11F-1 *et seq.*, and §62-13-1 *et seq.*

(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

(d) Notwithstanding the provisions of subsection (a) of this section, any person who willfully manufactures or delivers or possesses with intent to manufacture or deliver not less than 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or

cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than five nor more than 20 years, or fined not more than \$75,000, or both fined and imprisoned.

(e) For purposes of determining the weight of any controlled substance under this section, a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty.

(f) Under this section, where one act involves two or more controlled substances, the manufacture, delivery, or possession with intent to manufacture or deliver of each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together.

(g) 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;

(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.*, the penalties established in said article apply.

~~(e)~~(h) It is unlawful for any person knowingly or intentionally:

(1) To adulterate another controlled substance using fentanyl as an adulterant;

(2) To create a counterfeit substance or imitation controlled substance using fentanyl; or

(3) To cause the adulteration or counterfeiting or imitation of another controlled substance using fentanyl.

(4) Any person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years, or fined not more than \$50,000, or both fined and imprisoned.

(5) For purposes of this section:

(i) A controlled substance has been adulterated if fentanyl has been mixed or packed with it; and

(ii) Counterfeit substances and imitation controlled substances are further defined in §60A-1-101 of this code.

§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties

(a) Except as otherwise authorized by the provisions of this code, it is unlawful for any person to transport or cause to be transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be

6 guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility
7 for not less than ~~one year~~ five years nor more than ~~45~~ 20 years, or fined not more than \$25,000
8 \$50,000, or both fined and imprisoned. *Provided*, That any person who violates this section
9 knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in
10 combination with any other substance shall be fined not more than \$50,000 or imprisoned in a
11 state correctional facility for a definite term of not less than 10 nor more than 20 years, or both
12 fined and imprisoned

13 (2) Any other controlled substance classified in Schedule I, II or III ~~shall be~~ is guilty of a
14 felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less
15 than one year nor more than 10 years, or fined not more than \$15,000, or both: *Provided*, That for
16 the substance marijuana, as scheduled in §60A-2-204(d)(24) of this code, the penalty, upon
17 conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this
18 subsection.

19 (3) A substance classified in Schedule IV ~~shall be~~ is guilty of a felony and, upon conviction
20 thereof, may be imprisoned in the state correctional facility for not less than one year nor more
21 than five years, or fined not more than \$10,000, or both;

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

27 (c) Notwithstanding the provisions of subsection (b) of this section, any person violating or
28 causing a violation of subsection (a) of this section involving one kilogram or more of heroin, ~~five~~
29 ~~kilograms~~ one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine,
30 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or 5 or
31 more grams of fentanyl ~~500 grams of a substance or material containing a measurable amount of~~

methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for ~~a determinate~~ an indeterminate sentence of not less than ~~two~~ 15 nor more than 30 years.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving 100 but fewer than 1,000 grams of heroin, not less than ~~500~~ 100 but fewer than ~~5,000~~ 1,000 grams of cocaine or cocaine base, not less than ten but fewer than 99 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine ~~or not less than 50 grams but fewer than 500 grams of a substance or material containing a~~ measurable amount of methamphetamine, or one gram or more but less than five grams of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for ~~a determinate~~ an indeterminate sentence of not less than ~~two~~ seven nor more than 20 years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than 10 grams nor more than 100 grams of heroin, not less than ~~50~~ 10 grams nor more than ~~500~~ 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than ~~499 milligrams~~ one gram nor more than five grams of methamphetamine ~~or not less than 20 grams nor more than 50 grams of a substance or material containing a measurable amount of methamphetamine~~ or less than one gram of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a ~~determinate~~ an indeterminate sentence of not less than ~~two~~ five nor more than ~~45~~ 20 years.

(f) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

(g) For purposes of determining the weight of any controlled substance under this section,

a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty.

(h) Under this section, where the transportation into the state involves two or more controlled substances, the transportation into the state of each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together.

(i) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation.

§60A-4-414. Conspiracy.

(a) Any person who willfully conspires with one or more persons to commit a felony violation of §60A-4-401 of this code, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than ten years: *Provided*, That the provisions of this subsection are inapplicable to felony violations of §60A-4-401 of this code prohibiting the manufacture, delivery or possession with intent to manufacture or deliver marijuana.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver or possess with intent to manufacture or deliver one kilogram or more of heroin, ~~five kilograms~~ one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or ~~five hundred grams of a substance or material containing a measurable amount of methamphetamine~~ five grams or more of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for ~~a determinate~~ an indeterminate sentence of not less than ~~two~~ five nor more than 30 years.

(c) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver or possess with intent to manufacture or deliver not less than 100 but fewer than 1,000 grams of heroin, not less than ~~five hundred~~ 100 but fewer than ~~five thousand~~ 1,000 grams of cocaine or cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine or ~~not less than fifty grams but fewer than five hundred grams of a substance or material containing a measurable amount of methamphetamine~~ one gram or more but less than five grams of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a ~~determinate~~ an indeterminate sentence of not less than ~~two~~ three nor more than 20 years.

(d) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver, possess with intent to manufacture or deliver not less than 10 grams nor more than 100 grams of heroin, not less than ~~50~~ 10 grams nor more than ~~500~~ 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than ~~499 milligrams~~ one gram nor more than five grams of methamphetamine or ~~not less than 20 grams nor more than 50 grams of a substance or material containing a measurable amount of methamphetamine~~ or less than one gram of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a ~~determinate~~ an indeterminate sentence of not less than two nor more than 15 years.

(e) The trier of fact shall determine the quantity of the controlled substance attributable to the defendant beyond a reasonable doubt based on evidence adduced at trial.

(f) The determination of the trier of fact as to the quantity of controlled substance attributable to the defendant in a charge under this section may include all of the controlled

substances manufactured, delivered or possessed with intent to deliver or manufacture by other participants or members of the conspiracy.

(g) For purposes of determining the weight of any controlled substance under this section, a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty.

(h) Under this section, where the conspiracy involves two or more controlled substances, each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together.

~~(g)~~ (i) Offenses in this section proscribing conduct involving lesser quantities are lesser included offenses of offenses proscribing conduct involving larger quantities.

~~(h)~~ (j) A person may be charged under the provisions of §61-10-61, of this code for conduct that is charged under this section.

~~(i)~~ (k) Nothing in this section may be construed to place any limitation whatsoever upon alternative sentencing options available to a court.

§60A-4-416. Drug delivery resulting in death; failure to render aid.

(a) Any person who knowingly and willfully delivers a controlled substance or counterfeit controlled substance in violation of the provisions of §60A-4-401 of this code for an illicit purpose and the use, ingestion or consumption of the controlled substance or counterfeit controlled substance alone or in combination with one or more other controlled substances, proximately causes the death of a person using, ingesting or consuming the controlled substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than ~~three~~ 10 years nor more than ~~15~~ 40 years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of 10 years of his or her sentence.

10 (b) Any person who, while engaged in the illegal use of a controlled substance with
11 another, ~~who~~ knowingly fails to seek medical assistance for ~~such~~ the other person when the other
12 person suffers an overdose of the controlled substance or suffers a significant adverse physical
13 reaction to the controlled substance and the overdose or adverse physical reaction proximately
14 causes the death of the other person, is guilty of a felony and, upon conviction thereof, shall be
15 imprisoned for not less than ~~one year~~ two years nor more than ~~five~~ 10 years. A person imprisoned
16 pursuant to the provisions of this section is not eligible for parole prior to having served a minimum
17 of two years of his or her sentence.

18 (c) The sentences provided in this section are mandatory and are not subject to
19 suspension or probation.

NOTE: The purpose of this bill is to enhance the penalties for drug offenses and to match the federal drug offenses penalties.

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