

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 196

BY SENATORS DEEDS, TAYLOR, AND WOODRUM

[Reported March 5, 2025, from the Committee on the
Judiciary]

1 A BILL to amend and reenact §60A-4-401, §60A-4-409, §60A-4-414, §60A-4-416, §61-11-8, and
2 §62-12-2 of the Code of West Virginia, 1931, as amended, relating to controlled
3 substances violations; increasing sentences for certain controlled substances offenses;
4 making certain offenses ineligible for suspension or probation, or alternative sentencing;
5 declaring that minimum period of 10 years' incarceration for the offense of drug delivery
6 death; requiring inert substances mixed with controlled substances to be considered a
7 controlled substance for purposes of weight measurement; setting forth method for
8 measurement where more than one controlled substance is in a mixture; modifying
9 sentences for certain offenses; updating list of offenses related to controlled substance
10 that are qualifying offenses for recidivist sentencing enhancements; and declaring certain
11 offenses to be ineligible for probation.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

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,~~
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: *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~~
10 ~~a state correctional facility for not less than 3 nor more than 15 years, or both fined and~~
11 ~~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~~

38 ~~fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any~~
39 ~~substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established~~
40 ~~in said article apply.~~

41 ~~(c) It is unlawful for any person knowingly or intentionally to possess a controlled~~
42 ~~substance unless the substance was obtained directly from, or pursuant to, a valid prescription or~~
43 ~~order of a practitioner while acting in the course of his or her professional practice, or except as~~
44 ~~otherwise authorized by this act. Any person who violates this subsection is guilty of a~~
45 ~~misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the~~
46 ~~limitations specified in said section, or upon conviction thereof, the person may be confined in jail~~
47 ~~not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and~~
48 ~~confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first~~
49 ~~offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code;~~
50 ~~3,4-methylenedioxypyrovalerone (MPVD) and 3,4-methylenedioxypyrovalerone and/or~~
51 ~~mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall~~
52 ~~be disposed of under §60A-4-407 of this code.~~

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

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

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

61 ~~(3) Any person who violates this subsection is guilty of a misdemeanor and, upon~~
62 ~~conviction thereof, may be confined in jail for not less than six months nor more than one year, or~~
63 ~~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.~~

~~(e) 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.~~

(a) It is unlawful for any person to knowingly or intentionally 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 chapter. Any person who violates this subsection is guilty of a misdemeanor, and disposition is eligible for conditional discharge under §60A-4-407 of this code, subject to the limitations specified in that 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.

(b) Except as authorized by this chapter, 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:

(1) A controlled 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 three years nor more than 15 years, or fined not more than \$50,000, or both fined and imprisoned;

(2) 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;

(3) 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;

(4) 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 that article apply.

(c) Notwithstanding the provisions of subsection (b) 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 imprisoned in a state correctional facility for an indeterminate sentence of not less than 10 nor more than 30 years and fined not more than \$100,000. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(d) Notwithstanding the provisions of subsection (b) 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 imprisoned in a state correctional facility for an indeterminate sentence of not less than five nor more than 20 years and fined not more than \$75,000. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(e) 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:

(1) 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 three years nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned;

(2) 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;

(3) 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;

(4) 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 that article apply.

(f) 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.

(g) 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.

§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~~ is guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than ~~one year~~ five years nor more than ~~45~~20 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 imprisoned in a state correctional facility for a definite term of not less than 10 nor more than 20 years, or both fined and imprisoned~~

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

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

(4) A substance classified in Schedule V ~~shall be~~ 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 imprisoned: *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~~ that article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or ~~causing a violation~~ attempting to violate the provisions of subsection (a) of this section involving 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 ~~500 grams of a substance or material containing a measurable amount of methamphetamine~~ five or more 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~~ 15 years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or ~~causing a violation~~ attempting to violate the provisions 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 10 but fewer than ~~99~~ 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 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 years nor more than 20 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(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 years nor more than ~~15~~20 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(f) The offenses established by this section ~~shall be~~ are 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.

§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~~10 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 years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(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 years nor more than 20 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(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 years nor more than 15 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

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

~~(h)(i)~~ (i) A person may be charged under the provisions of ~~§61-10-61~~ §61-10-31 of this code for conduct that is charged under this section.

~~(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 ~~45~~ 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.

(b) Any person who, while engaged in the illegal use of a controlled substance with another, ~~who~~ knowingly fails to seek medical assistance for ~~such~~ the other person when the other

person suffers an overdose of the controlled substance or suffers a significant adverse physical reaction to the controlled substance and the overdose or adverse physical reaction proximately causes the death of the other person, is guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than ~~one year~~ two years nor more than ~~five~~ 10 years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of two years of his or her sentence.

(c) The sentences provided in this section are mandatory. A person convicted of an offense set forth in this section is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(d) As used in this section:

(1) The phrase "engaged in illegal use of a controlled substance with another person" means being in the physical presence of a person engaged in illegal drug use and participating with him or her in illegal drug use, or while in the presence of a person engaged in illegal drug use knowingly facilitating illegal drug use by the other person so engaged.

(2) "Seek medical assistance" means contacting the 9-1-1 emergency system, a poison control facility, any type of first responder, a medical facility or medical professional capable of treating an overdose, and in the case of an opioid overdose, to administer or cause the administration of a commercially produced medically recognized opioid antagonist.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

(a) For purposes of this section, "qualifying offense" means any offense or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

(1) ~~§60A-4-401(a)(i) and §60A-4-401(a)(ii); §60A-4-401(b)(i), §60A-4-401(b)(ii), §60A-4-401(c), §60A-4-401(d), §60A-4-401(e)(i) and §60A-4-401(e)(ii);~~

- 5 (2) §60A-4-406;
- 6 (3) §60A-4-409(b)(1), and §60A-4-409(b)(2); §60A-4-409(c), §60A-4-409(d), and §60A-4-
- 7 409(e);
- 8 (4) §60A-4-411;
- 9 (5) §60A-4-414;
- 10 (6) §60A-4-415;
- 11 (7) §60A-4-416(a);
- 12 (8) §61-2-1;
- 13 (9) §61-2-4;
- 14 (10) §61-2-7;
- 15 (11) §61-2-9(a);
- 16 (12) §61-2-9a(d) and §61-2-9a(e);
- 17 (13) §61-2-9b;
- 18 (14) §61-2-9c;
- 19 (15) §61-2-9d;
- 20 (16) §61-2-10;
- 21 (17) §61-2-10b(b) and §61-2-10b(c);
- 22 (18) Felony provisions of §61-2-10b(d);
- 23 (19) §61-2-12;
- 24 (20) Felony provisions of §61-2-13;
- 25 (21) §61-2-14;
- 26 (22) §61-2-14a(a) and §61-2-14a(d);
- 27 (23) §61-2-14c;
- 28 (24) §61-2-14d(a) and §61-2-14d(b);
- 29 (25) §61-2-14f;
- 30 (26) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);

- 31 (27) §61-2-16a(a) and §61-2-16a(b);
- 32 (28) Felony provisions of §61-2-16a(c);
- 33 (29) §61-2-28(d);
- 34 (30) §61-2-29(d) and §61-2-29(e);
- 35 (31) §61-2-29a;
- 36 (32) §61-3-1;
- 37 (33) §61-3-2;
- 38 (34) §61-3-3;
- 39 (35) §61-3-4;
- 40 (36) §61-3-5;
- 41 (37) §61-3-6;
- 42 (38) §61-3-7;
- 43 (39) §61-3-11;
- 44 (40) Felony violation of §61-3-12;
- 45 (41) §61-3-13(a);
- 46 (42) Felony violation of §61-3-18;
- 47 (43) Felony violation of §61-3-19;
- 48 (44) Felony violation of §61-3-20;
- 49 (45) Felony violation of §61-3-20a;
- 50 (46) Felony violation of §61-3-21;
- 51 (47) §61-3-22;
- 52 (48) Felony violation of §61-3-24;
- 53 (49) Felony violation of §61-3-24a;
- 54 (50) §61-3-27;
- 55 (51) §61-3-54;
- 56 (52) §61-3C-14b;

- 57 (53) §61-3E-5;
- 58 (54) Felony violation of §61-5-10;
- 59 (55) ~~§61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);~~Felony provisions of §61-5-17;
- 60 (56) §61-5-27;
- 61 (57) §61-6-24;
- 62 (58) Felony provisions of §61-7-7;
- 63 (59) §61-7-12;
- 64 (60) §61-7-15;
- 65 (61) §61-7-15a;
- 66 (62) §61-8-12;
- 67 (63) §61-8-19(b);
- 68 (64) §61-8A-2;
- 69 (65) §61-8A-4;
- 70 (66) §61-8A-5;
- 71 (67) §61-8B-3;
- 72 (68) §61-8B-4;
- 73 (69) §61-8B-5;
- 74 (70) §61-8B-7;
- 75 (71) §61-8B-10;
- 76 (72) §61-8B-11b;
- 77 (73) §61-8C-2;
- 78 (74) §61-8C-3;
- 79 (75) §61-8C-3a;
- 80 (76) §61-8D-2;
- 81 (77) §61-8D-2a;
- 82 (78) §61-8D-3;

(79) §61-8D-3a;

(80) §61-8D-4;

(81) §61-8D-4a;

(82) §61-8D-5;

(83) §61-8D-6;

(84) §61-10-31;

(85) §61-11-8;

(86) §61-11-8a;

(87) §61-14-2; and

(88) §17C-5-2(b), driving under the influence causing death;

(89) Felony provisions of §61-2-10c; and

(90) Felony provisions of §61-8-9.

(b) Except as provided by subsection (c) of this section, when any person is convicted of a qualifying offense and is subject to imprisonment in a state correctional facility for the qualifying offender and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in that case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under the sentence.

(c) Notwithstanding any provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of this code, or has been so convicted under any law of the United States or any other state for an offense which has the same or substantially similar elements as any offense described in this

subsection, the person shall be punished by imprisonment in a state correctional facility for life and is not eligible for parole.

(d) When it is determined, as provided in §61-11-19 of this code, that the person has been twice previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility which has the same or substantially similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility for life: *Provided*, That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section: *Provided, however*, That the most recent previous qualifying offense which would otherwise constitute a qualifying offense for purposes of this subsection may not be considered if more than 20 years have elapsed between: (1) The release of the person from his or her term of imprisonment or period of supervision resulting from the most recent qualifying offense or the expiration of a period of supervised release resulting from the offense; and (2) the conduct underlying the current charge.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor are eligible for probation, notwithstanding the provisions of §61-11-18 and §61-11-19 of this code: *Provided*, That persons convicted of offenses set forth in §60A-4-401(c), §60A-4-401(d), §60A-4-409(c), §60A-4-409(d), §60A-4-409(e), §60A-4-414(b), §60A-4-414(c), §60A-4-414(d), and §60A-4-416 are not eligible for probation.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment, or brandishing of a firearm is not eligible for probation. Nothing in this section may apply to an accessory before

the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm may not be applicable unless the fact is clearly stated and included in the indictment or presentment by which that person is charged and is either:

(A) Found by the court upon a plea of guilty or nolo contendere;

(B) Found by the jury, if the matter is tried before a jury, upon submitting to the jury a special interrogatory for that purpose; or

(C) Found by the court, if the matter is tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year 1981:

(A) Apply to all applicable offenses occurring on or after August 1 of that year;

(B) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(C) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state shall give notice in writing of its intent to seek that finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding is sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(D) May not apply with respect to cases not affected by the amendment and in those cases the prior provisions of this section shall apply and be construed without reference to the amendment.

Insofar as the amendments relate to mandatory sentences without probation, all matters requiring that sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means.

(e) Any person who has been found guilty of, or pleaded guilty to, a violation of §61-3C-14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-5 of this code may only be eligible for probation after undergoing a physical, mental, and psychiatric or psychological study and diagnosis which shall include an ongoing treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: *Provided*, That nothing disclosed by the person during that study or diagnosis may be made available to any law-enforcement agency or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the probationer to do harm to any person, animal, institution, or property, in which case the information may be released only to those persons necessary for protection of the person, animal, institution, or property.

Within 90 days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Human Services shall propose rules and emergency rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, §61-8D-5, §61-8D-6, §61-2-14, §61-8-12, and §61-8-13 of this code, or of a felony violation involving a minor of §61-8-6 or §61-8-7 of this code, or of a similar provision in another jurisdiction, shall register upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender send written notice to the State Police of the release of the offender. The notice shall include:

- (1) The full name of the person;
- (2) The address where the person shall reside;
- (3) The person's Social Security number;
- (4) A recent photograph of the person;
- (5) A brief description of the crime for which the person was convicted;
- (6) Fingerprints; and
- (7) For any person determined to be a sexually violent predator as defined in §15-12-2a of this code, the notice shall also include:

- ~~(i)~~(A) Identifying factors, including physical characteristics;
- ~~(ii)~~(B) A history of the offense; and
- ~~(iii)~~(C) Documentation of any treatment received for the mental abnormality or personality disorder.