

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 444**

**FISCAL  
NOTE**

By Senator Tarr

[Introduced February 13, 2025; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §60A-4-401, §60A-4-407, and §60A-4-407a of the Code of West  
2 Virginia, 1931, as amended, relating to controlled substances; creating mandatory three-  
3 year sentence for possession of Schedule I or II substances, except cannabis; providing  
4 exceptions for persons incidentally exposed to the substances or who are forced to  
5 possess the substances; conditional discharge for first offense; and release with non-  
6 extraditable warrant.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE                    4.                    OFFENSES                    AND                    PENALTIES.**  
**§60A-4-401.                    Prohibited                    acts;                    penalties.**

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

3 Any person who violates this subsection with respect to:

4 (i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is  
5 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state  
6 correctional facility for not less than one year nor more than 15 years, or fined not more than  
7 \$25,000, or both fined and imprisoned: *Provided*, That any person who violates this section  
8 knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in  
9 combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a  
10 state correctional facility for not less than 3 three nor more than 15 years, or both fined and  
11 imprisoned

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

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

(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.

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

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

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

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

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

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

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

(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.

(f) It is unlawful for any person knowingly or intentionally to possess a controlled substance classified in Schedule I or II, except for cannabis. Any person who violates this subsection is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than three years. There is a presumption that the person has also consumed the controlled substance possessed, without a prescription for the controlled substance, and is under the influence of a controlled substance classified in Schedule I or II: *Provided*, That emergency responders who may have been incidentally exposed to a controlled substance classified in Schedule I or II, or an individual who is forced to be under the influence of a controlled substance classified in Schedule I or II are exempt from the criminal provisions of this section and code.

**§60A-4-407. Conditional discharge for first offense of possession, use, consumption, or being under the influence of a controlled substance.**

(a) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs,

3 marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of  
4 possession, use, consume, or being under the influence of a controlled substance under-section  
5 §60A-4-401(c) or (f) the court, without entering a judgment of guilt and with the consent of the  
6 accused, may defer further proceedings and place him or her on probation upon terms and  
7 conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and  
8 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall  
9 discharge the person and dismiss the proceedings against him or her. Discharge and dismissal  
10 under this section shall be without adjudication of guilt and is not a conviction for purposes of this  
11 section or for purposes of disqualifications or disabilities imposed by law upon conviction of a  
12 crime, including the additional penalties imposed for second or subsequent convictions under  
13 section 408. The effect of the dismissal and discharge shall be to restore the person in  
14 contemplation of law to the status he or she occupied prior to arrest and trial. No person as to  
15 whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury,  
16 false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or  
17 acknowledge his or her arrest or trial in response to any inquiry made of him or her for any  
18 purpose. There may be only one discharge and dismissal under this section with respect to any  
19 person.

20 (b) After a period of not less than six months which shall begin to run immediately upon the  
21 expiration of a term of probation imposed upon any person under this chapter, the person may  
22 apply to the court for an order to expunge from all official records all recordations of his or her  
23 arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the  
24 person during the period of his or her probation and during the period of time prior to his or her  
25 application to the court under this section has not been guilty of any serious or repeated violation  
26 of the conditions of his or her probation, it shall order the expungement.

27 (c) Notwithstanding any provision of this code to the contrary, any person prosecuted  
28 pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of

29 this section shall be liable for any court costs assessable against a person convicted of a violation  
30 of section 401(c) of this article. Payment of such costs may be made a condition of probation.

31 The costs assessed pursuant to this section, whether as a term of probation or not, shall be  
32 distributed as other court costs in accordance with §50-3-2, §14-2A-4, §30-29-4, and §62-5-2,  
33 §62-5-7, and §62-5-10 of this code.

34 (d) Notwithstanding any provision of this code to the contrary, a person who is convicted  
35 under the provisions of §60A-4-401(f) may, after one year served, be released for two weeks with a  
36 non-extraditable warrant, issued a bus ticket to any state west of the Mississippi River. If the  
37 person returns to West Virginia before the remaining two years of their sentence for the  
38 possession, they are mandated to complete their two-year sentence in prison.

**§60A-4-407a. Authorizing additional requirements to obtain a final order of discharge and  
dismissal for persons charged with possession, use, consumption, or being under  
the influence of controlled substances.**

1 (a) Notwithstanding any provision of this code to the contrary, when a person pleads guilty  
2 or is found guilty of a violation of §60A-4-401(c) or §60A-4-401(f) of this code, or a municipal  
3 ordinance containing the same elements where the controlled substance possessed is listed in  
4 §60A-2-204 of this code, other than marijuana, or is a controlled substance listed in §60A-2-206,  
5 §60A-2-208, or §60A-2-210 of this code, the court may, as an additional condition for the entry of a  
6 final order of discharge or dismissal under §60A-4-407 of this code or a municipal ordinance  
7 containing the same or substantially the same provision, require the defendant to be:

8 (1) Evaluated for admission into a drug court program; or

9 (2) Participate in a drug treatment program.

10 (b) If a defendant is determined to be an appropriate candidate for admission to drug court  
11 or a drug treatment program, the court may make successful completion of a drug court or a drug  
12 treatment program a requirement for obtaining a final order of discharge and dismissal.

NOTE: The purpose of this bill is to create a mandatory three-year sentence for possession of Schedule I or II substances, except cannabis. The bill provides exceptions from prosecution for persons incidentally exposed to the substances or who are forced to possess the substances. And, the bill provides a conditional discharge for first offenders and release with non-extraditable warrant, with a bus ticket to any state West of the Mississippi River.

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