

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 463

By Senator Deeds

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

A BILL to amend and reenact §60A-4-401 and §60A-4-407 of the Code of West Virginia, 1931, as amended; and to amend said code by adding two new sections, designated §60A-4-407b and §60A-4-407c, relating to possession of controlled substances; repealing certain requirements for the sentence enhancement for crimes involving fentanyl; creating a separate offense for simple possession of a controlled substance classified in Schedule I or II which is a narcotic drug or which is methamphetamine; requiring that the new offense is triable only in circuit court; creating a procedure for disposition of the new offense; creating a second or subsequent offense for simple possession of a controlled substance classified in Schedule I or II which is a narcotic drug or which is methamphetamine; creating a procedure for reduction of certain felony convictions to misdemeanor conditions; authorizing the courts to impose conditions for reduction of a felony conviction to a misdemeanor conviction; and creating criminal penalties.

Be it enacted by the Legislature of West Virginia:

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 nor more than 15 years, or fined not more than \$25,000, 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 three 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 that 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 in
40 said article apply.

41 (c)(1) 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. Except as provided in subdivision (2) of this subsection, Any any
45 person who violates this subsection is guilty of a misdemeanor, and disposition may be made
46 under §60A-4-407 of this code, subject to the limitations specified in said ~~that~~ section, or upon
47 conviction thereof, the person may be confined in jail not less than 90 days nor more than six
48 months, or fined not more than \$1,000, or both fined and confined: *Provided*, That notwithstanding
49 any other provision of this act to the contrary, any first offense for possession of synthetic
50 cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypyrovalerone
51 (MPVD) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in §60A-1-101(f) of
52 this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

53 (2) Any person, who commits an offense in violation of subdivision (1) of this subsection,
54 and the controlled substance is classified in Schedule I or II which is a narcotic drug or which is
55 methamphetamine, is guilty of a misdemeanor, and upon conviction thereof, may be confined in a
56 regional jail for not less than six months nor more than three years, or fined not more than \$1,000,
57 or both fined and confined: *Provided*, That disposition of any offense charged under this
58 subdivision shall be in accordance with §60A-4-407b. Notwithstanding the provisions of §60A-4-
59 408, any person, convicted of a second or subsequent offense under this subdivision occurring
60 within five years of the date of a prior conviction for a violation of the same is guilty of a felony, and
61 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one nor
62 more than five years, or fined not more than \$1,000, or both fined and imprisoned: *Provided*,
63 however, that a second or subsequent conviction which occurs five years or more from the date of

64 a prior conviction shall be considered a misdemeanor offense in accordance with this subdivision.

65 (3) Disposition of a subsequent conviction for a violation of subdivision (2) of this
66 subsection occurring within five years of the date of the prior conviction shall be in accordance with
67 the provisions of §60A-4-407c, subject to the limitations set forth in that section.

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

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

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

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

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

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

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

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

88 (3) To cause the adulteration or counterfeiting or imitation of another controlled substance
89 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-4-407. Conditional discharge for first offense of possession.

(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, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under §60A-4-401(c)(1) of this code, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under ~~section 408~~ §60A-4-408 of this code. The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only

one discharge and dismissal under this section with respect to any person.

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

(c) Notwithstanding any provision of this code to the contrary, any person prosecuted pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of §60A-4-401(c)(1) of this code. Payment of such costs may be made a condition of probation.

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

§60A-4-407b. Disposition of misdemeanor offense for possession of a controlled substance classified in Schedule I or II which is a narcotic drug or which is methamphetamine.

(a) Any misdemeanor offense charged under §60A-4-401(c)(2) shall only be triable in the circuit court of the county in which the offense occurred by information, with the initial appearance in the magistrate court.

(b) Any person charged with a misdemeanor offense under §60A-4-401(c)(2) shall be afforded the same rights with respect to initial appearances and preliminary examinations as a person charged with a felony offense pursuant to the Rules of Criminal Procedure promulgated by the West Virginia Supreme Court of Appeals.

(c) Following the initial appearance, the prosecuting attorney of the county in which the

9 offense occurred shall cause an information to be filed in the circuit court charging the person with
10 a misdemeanor violation of §60A-4-401(c)(2), which may be filed without leave of the court and in
11 accordance with the rules promulgated by the Supreme Court of Appeals.

12 (d) Nothing in this section may limit or prohibit the circuit court's authority to impose other
13 conditions relating to sentencing alternatives for those offenders who may require less than
14 institutional custody, including but not limited to the provisions of §62-11B-1, *et seq.*, §62-11C-1, *et*
15 *seq.* §62-11F-1 *et seq.*, and §62-13-1, *et seq.*

§60A-4-407c. Reduction of felony conviction for possession of a controlled substance
classified in Schedule I or II which is a narcotic drug or which is methamphetamine;
authorizing additional requirements to obtain a final order of reduced misdemeanor
for persons convicted of possession of controlled substances classified in
Schedule I or II which is a narcotic drug or which is methamphetamine.

1 (a) Whenever any person is convicted of a second, but not subsequent, violation or who
2 pleads guilty to or is found guilty of a second, but not subsequent, felony offense of possession of a
3 controlled substance under §60A-4-401(c)(2), the court shall order the reduction of the felony
4 conviction to a misdemeanor conviction if the person complies with the provisions of this section.

5 (b) The court may, as a condition for the entry of a final order reducing the felony conviction
6 to a misdemeanor conviction, require the defendant to be:

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

8 (2) Participate in an in-patient, out-patient, or carceral-based drug treatment program; or

9 (3) Any other conditions or combination of conditions that the judicial officer determines
10 reasonably necessary to treat the condition giving rise to the criminal conduct.

11 (c) If a defendant is determined to be an appropriate candidate for admission to drug court
12 or a drug treatment program, successful completion of a drug court or a drug treatment program is
13 a requirement for obtaining a final order reducing the felony conviction to a misdemeanor
14 conviction.

15 (d) If the court finds the person has satisfactorily completed any drug treatment program
16 imposed as a condition of probation or as part of a sentence, the court shall order the felony
17 conviction vacated and shall enter an order of conviction of a misdemeanor violation of the
18 provisions of §60A-4-401(c)(2): *Provided*, That, as a condition of the reduction of a felony
19 conviction to a misdemeanor conviction, the defendant shall waive any objection to the reduction
20 of the offense and to any time served on the felony conviction in excess of that time which may
21 have been served on a misdemeanor conviction. Upon entry of the judgment of conviction of the
22 misdemeanor offense, the court shall indicate on its order that the judgment of conviction is
23 entered pursuant to the provisions of this section.

24 (e) Nothing in this section may limit or prohibit the court's authority to impose other
25 conditions relating to sentencing alternatives for those offenders who may require less than
26 institutional custody, including but not limited to the provisions of §62-11B-1, *et seq.*, §62-11C-1, *et*
27 *seq.* §62-11F-1 *et seq.*, and §62-13-1, *et seq.*

NOTE: The purpose of this bill is to create a new penalty and procedure for simple possession of a controlled substance classified in Schedule I or II which is a narcotic drug or which is methamphetamine.

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