

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 580

By Senators Helton and Fuller

[Introduced February 24, 2025; referred
to the Select Committee on Substance Use Disorder
and Mental Health; and then to the Committee on the
Judiciary]

1 A BILL to amend and reenact §60A-4-401 and §60A-4-416 of the Code of West Virginia, 1931, as
2 amended, relating to increasing the penalty for felony distribution of a controlled substance
3 classified in Schedule I or II which is a narcotic drug or methamphetamine; and increasing
4 the penalty for drug delivery resulting in death.

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 5 nor more than 15 40 years, or both fined and~~
11 ~~imprisoned; *Provided*, That, notwithstanding any other provision of law to the contrary, a person~~
12 ~~convicted under this subsection is ineligible for parole for a period of five years if he or she is~~
13 ~~sentenced to the custody of the Commissioner of Corrections and Rehabilitation for service of a~~
14 ~~sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-~~
15 ~~401(a)(i) of this code for distribution of a controlled substance classified in Schedule I or II,~~
16 ~~excluding marijuana (cannabis).~~

17 (ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and,
18 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one
19 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.

(c) 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.

(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.

§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 section four hundred one, article four of this chapter 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 nor more than fifteen years~~ life, which sentence may not be suspended.

(b) Any person who, while engaged in the illegal use of a controlled substance with

10 another, who knowingly fails to seek medical assistance for such other person when the other
11 person suffers an overdose of the controlled substance or suffers a significant adverse physical
12 reaction to the controlled substance and the overdose or adverse physical reaction proximately
13 causes the death of the other person, is guilty of a felony and, upon conviction thereof, shall be
14 imprisoned for not less than one year nor more than five years.

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NOTE: The purpose of this bill is to increase the penalty for felony distribution of a controlled substance classified in Schedule I or II which is a narcotic drug or methamphetamine; and increase the penalty for drug delivery resulting in death.

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