

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 34

**FISCAL
NOTE**

By Senator Tarr

[Introduced January 14, 2026; 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 when
8 the controlled substance classified in Schedule II is fentanyl, either alone or in combination with
9 any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional
10 facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

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

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

17 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction

18 thereof, may be confined in jail for not less than six months nor more than one year, or fined not
19 more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any
20 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in
21 said article apply.

22 (b) Except as authorized by this act, it is unlawful for any person to create, deliver, or
23 possess with intent to deliver, a counterfeit substance.

24 Any person who violates this subsection with respect to:

25 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or
26 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state
27 correctional facility for not less than one year nor more than 15 years, or fined not more than
28 \$25,000, or both fined and imprisoned;

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

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

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

40 (c) It is unlawful for any person knowingly or intentionally to possess, use, consume, or be
41 under the influence of a controlled substance unless the substance was obtained directly from, or
42 pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her
43 professional practice, or except as otherwise authorized by this act. Any person who violates this

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

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

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

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

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

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

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

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

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

72 (3) To cause the adulteration or counterfeiting or imitation of another controlled substance

73 using fentanyl.

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

77 (5) For purposes of this section:

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

S60A-4-407. Conditional discharge for first offense of possession, use, consumption, or

being under the influence of a controlled substance.

4 possession, use, consuming, 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. Also, 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.