

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2516

BY DELEGATES BYRD, ROHRBACH, FLUHARTY,

FLEISCHAUER AND BALDWIN

[Introduced February 16, 2017; Referred
to the Committee on Prevention and Treatment of
Substance Abuse then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new section,
2 designated §15-9-4a; to amend and reenact §16-1-4 of said code; to amend and reenact
3 §18-2-7b of said code; to amend and reenact §60A-4-401; to amend said code by adding
4 thereto a new section, designated §60A-4-414; and to amend said code by adding thereto
5 a new section, designated §61-2-4a, all relating to substance abuse; mandating studies
6 by the Governor's committee on crime, delinquency and correction on reforms to state
7 drug sentencing laws; requiring said committee to coordinate school education program
8 by law-enforcement officers; authorizing the State Department of Health to promulgate
9 rules regulating the exchange of syringes and providing immunity for certain actions
10 relating thereto; directing the State Board of Education to requiring county boards to
11 provide substance abuse training education; directing State Board of Education to
12 coordinate its activities with state law enforcement agencies; providing a penalty
13 enhancement for use of a firearm during manufacture or distribution of controlled or
14 imitation controlled substance; providing that an attempt or conspiracy to attempt to
15 distribute controlled substances or imitation controlled substance is the same as the actual
16 act; and establishing new criminal penalty for causing death by distributing a controlled
17 substance.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §15-9-4a; that §16-1-4 of said code be amended and reenacted; that §18-2-
3 7b of said code be amended and reenacted; that §60A-4-401 of said code be amended and
4 reenacted; that said code be amended by adding thereto a new section, designated §60A-4-414;
5 and that said code be amended by adding thereto a new section, designated §61-2-4a, all to read
6 as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-4a. Sentencing study for drug offenders; promotion of student education about alcohol, drug abuse and police practices.

1 (a) The Governor's committee on crime, delinquency and correction shall conduct
2 comprehensive research and recommend to the Legislature by January 1, 2018, reforms to our
3 criminal sentencing laws and procedures relating to:

4 (1) Revision of nonviolent drug offenses for individuals found to have committed crimes
5 as a result of their addictions to or the illegal use of drugs. The committee shall focus on
6 recommendations to the Legislature for shifting criminal penalties of our laws away from
7 incarceration, focusing on interdiction, counseling and rehabilitation, to address the underlying
8 causes of addition of these individuals;

9 (2) The committee shall also conduct a comprehensive review and study of national and
10 local trends and programs that have proven successful in addressing and overcoming addiction
11 and identifying the nature of the causes of addiction and criminal behavior related to drug
12 addiction. The committee shall provide recommendations to the Legislature for the creation of
13 programs and establishment of facilities in the state that provide how the state can best shift its
14 expenditures in a revenue neutral fashion away from incarceration to interdiction programs,
15 facilities and related services; and

16 (3) The committee shall study and make recommendations to the Legislature relating to
17 criminal sentencing statutes relating to controlled substance distribution.

18 (b) The Governor's committee on crime, delinquency and correction shall facilitate a
19 program between state law-enforcement personnel and the State Board of Education and county
20 school boards to coordinate activities established in section seven-b, article two, chapter eighteen
21 of this code, directing law-enforcement agencies periodically providing opportunities for age

22 appropriate student education on law enforcement practices and relay the experiences of law-
23 enforcement officers and others on the impacts of illegal alcohol and drug use. This program is to
24 be designed to facilitate understanding and appreciation for the risks of illegal alcohol and drug
25 use and likely actions by law-enforcement officers when conducting investigations. The instruction
26 is to include principles of law enforcement criminal investigations and how to appropriately
27 respond to an officer during a vehicular stop or criminal investigation, to promote understanding
28 of students on the risks to and duties of law-enforcement officers, and how to appropriately
29 interact with law-enforcement officers during these circumstances, including problematic or
30 dangerous actions or behaviors that could result in detention or arrest.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with the provisions of article three,
2 chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of
3 this chapter. The secretary may appoint or designate advisory councils of professionals in the
4 areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental
5 health and intellectual disability centers and any other areas necessary to advise the secretary
6 on rules.

7 (b) The rules may include, but are not limited to, the regulation of:

8 (1) Land usage endangering the public health: *Provided*, That no rules may be
9 promulgated or enforced restricting the subdivision or development of any parcel of land within
10 which the individual tracts, lots or parcels exceed two acres each in total surface area and which
11 individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet
12 even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total
13 surface area, and which tracts are sold, leased or utilized only as single-family dwelling units.

14 Notwithstanding the provisions of this subsection, nothing in this section may be construed to
15 abate the authority of the department to:

16 (A) Restrict the subdivision or development of a tract for any more intense or higher density
17 occupancy than a single-family dwelling unit;

18 (B) Propose or enforce rules applicable to single-family dwelling units for single-family
19 dwelling unit sanitary sewerage disposal systems; or

20 (C) Restrict any subdivision or development which might endanger the public health, the
21 sanitary condition of streams or sources of water supply;

22 (2) The sanitary condition of all institutions and schools, whether public or private, public
23 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open
24 to the general public and inviting public patronage or public assembly, or tendering to the public
25 any item for human consumption and places where trades or industries are conducted;

26 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources
27 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel
28 connected with any of those facilities, without regard to whether the supplies or systems are
29 publicly or privately owned; and the design of all water systems, plumbing systems, sewerage
30 systems, sewage treatment plants, excreta disposal methods and swimming pools in this state,
31 whether publicly or privately owned;

32 (4) Safe drinking water, including:

33 (A) The maximum contaminant levels to which all public water systems must conform in
34 order to prevent adverse effects on the health of individuals and, if appropriate, treatment
35 techniques that reduce the contaminant or contaminants to a level which will not adversely affect
36 the health of the consumer. The rule shall contain provisions to protect and prevent contamination
37 of wellheads and well fields used by public water supplies so that contaminants do not reach a
38 level that would adversely affect the health of the consumer;

39 (B) The minimum requirements for: Sampling and testing; system operation; public

40 notification by a public water system on being granted a variance or exemption or upon failure to
41 comply with specific requirements of this section and rules promulgated under this section; record
42 keeping; laboratory certification; as well as procedures and conditions for granting variances and
43 exemptions to public water systems from state public water systems rules; and

44 (C) The requirements covering the production and distribution of bottled drinking water
45 and may establish requirements governing the taste, odor, appearance and other consumer
46 acceptability parameters of drinking water;

47 (5) Food and drug standards, including cleanliness, proscription of additives, proscription
48 of sale and other requirements in accordance with article seven of this chapter as are necessary
49 to protect the health of the citizens of this state;

50 (6) The training and examination requirements for emergency medical service attendants
51 and emergency medical care technician-paramedics; the designation of the health care facilities,
52 health care services and the industries and occupations in the state that must have emergency
53 medical service attendants and emergency medical care technician-paramedics employed and
54 the availability, communications and equipment requirements with respect to emergency medical
55 service attendants and to emergency medical care technician-paramedics. Any regulation of
56 emergency medical service attendants and emergency medical care technician- paramedics may
57 not exceed the provisions of article four-c of this chapter;

58 (7) The health and sanitary conditions of establishments commonly referred to as bed and
59 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment
60 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may
61 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer
62 rooms to install a restaurant-style or commercial food service facility. The secretary may not
63 require an owner of a bed and breakfast providing sleeping accommodations of more than six
64 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast
65 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

66 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,
67 laboratory service fees, environmental health service fees, health facility fees and permit fees;

68 (9) The collection of data on health status, the health system and the costs of health care;

69 (c) The secretary shall propose a rule for legislative approval in accordance with the
70 provisions of article three, chapter twenty-nine-a of this code for the distribution of state aid to
71 local health departments and basic public health services funds.

72 The rule shall include the following provisions:

73 Base allocation amount for each county;

74 Establishment and administration of an emergency fund of no more than two percent of
75 the total annual funds of which unused amounts are to be distributed back to local boards of health
76 at the end of each fiscal year;

77 A calculation of funds utilized for state support of local health departments;

78 Distribution of remaining funds on a per capita weighted population approach which
79 factors coefficients for poverty, health status, population density and health department
80 interventions for each county and a coefficient which encourages counties to merge in the
81 provision of public health services;

82 A hold-harmless provision to provide that each local health department receives no less
83 in state support for a period of four years beginning in the 2009 budget year.

84 The Legislature finds that an emergency exists and, therefore, the secretary shall file an
85 emergency rule to implement the provisions of this section pursuant to the provisions of section
86 fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior
87 approval of the Legislative Oversight Commission on Health and Human Resources
88 Accountability prior to filing with the Secretary of State.

89 (d) The secretary shall propose a rule for legislative approval in accordance with the
90 provisions of article three, chapter twenty-nine-a of this code for a syringe exchange program
91 operated by a local health department. A local health department, including the local health officer,

92 that operates a syringe exchange program in compliance with a legislative rule promulgated in
93 accordance with this subdivision is immune from any civil or criminal liability arising out of any act
94 or omission resulting from the syringe exchange program unless the act or omission was the
95 result of gross negligence or willful misconduct. The Legislature finds that for the purposes of
96 section fifteen, article three, chapter twenty-nine-a of this code, an emergency exists requiring the
97 promulgation of an emergency rule to preserve the public peace, health, safety or welfare and to
98 prevent substantial harm to the public interest.

99 ~~(d)~~ (e) The secretary may propose rules for legislative approval that may include the
100 regulation of other health-related matters which the department is authorized to supervise and for
101 which the rule-making authority has not been otherwise assigned.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7b. Programs in drug prevention and violence reduction.

1 (a) In order for the schools to become healthy learning environments and to provide a
2 strong defense against drug use and violence, the State Board of Education shall prescribe
3 programs within the existing health and physical education program which teach resistance and
4 life skills to counteract societal and peer pressure to use drugs, alcohol and tobacco, and shall
5 include counselors, teachers and staff in full implementation of the program. The board shall also
6 prescribe programs to coordinate violence reduction efforts in schools and between schools and
7 their communities and to train students, teachers, counselors and staff in conflict resolution skills.
8 The program shall be comprehensive, interdisciplinary and shall begin in elementary school. The
9 state board shall report to the Legislative Oversight Commission on education accountability on
10 the status of the programs no later than July 1, 1995.

11 (b) No later than the start of the 2017-2018 school year, the State Board of Education shall
12 require each county board of education to implement a comprehensive drug awareness and

13 prevention program that mandates students in grades K through 12 to receive instruction
14 regarding the dangers of substance abuse. The purpose of the drug awareness and prevention
15 program is to:

16 (1) Keep students from illegally using alcohol, tobacco or other drugs;

17 (2) Reduce or eliminate the incidence and prevalence of student alcohol, tobacco and
18 other drug abuse;

19 (3) Reduce the factors that place students at risk with alcohol, tobacco or other drugs
20 through school and community based planning processes;

21 (4) Contribute to the development of school environments and alternative activities that
22 are alcohol, tobacco and drug-free;

23 (5) Increase the knowledge and skills of students, staff and community members for
24 avoiding the harmful effects of alcohol, tobacco, drug-use and blood borne pathogens; and

25 (6) Actively involve staff, students, parents, and other community members in the
26 development and implementation of the drug awareness and prevention program plans.

27 (c) The state board shall coordinate the directives of subsection (b) this section with
28 educators, drug rehabilitation specialists and law-enforcement agencies to periodically provide
29 opportunities for age appropriate student education on their experiences on the impacts of illegal
30 alcohol and drug use. Further, the program is to facilitate understanding and appreciation for the
31 risks to, duties of, and likely actions by law-enforcement officers when conducting investigations,
32 instruction is to include how to respond to an officer during a vehicular or other stop or police
33 interaction, including problematic or dangerous actions and behaviors that could result in a person
34 being detained or arrested.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCE ACT.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; 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, is guilty
5 of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less
6 than one year nor more than fifteen years, or fined not more than \$25,000, or both;

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

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

13 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction,
14 may be confined in jail for not less than six months nor more than one year, or fined not more
15 than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as Schedule
16 V in article ten of this chapter, the penalties established in said article apply.

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

19 Any person who violates this subsection with respect to:

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

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

26 (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon

27 conviction, may be imprisoned in the state correctional facility for not less than one year nor more
28 than three years, or fined not more than \$10,000, or both;

29 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon
30 conviction, may be confined in jail for not less than six months nor more than one year, or fined
31 not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as
32 Schedule V in article ten of this chapter, the penalties established in said article apply.

33 (c) It is unlawful for any person knowingly or intentionally to possess a controlled
34 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or
35 order of a practitioner while acting in the course of his professional practice, or except as
36 otherwise authorized by this act. Any person who violates this subsection is guilty of a
37 misdemeanor and, disposition may be made under section four hundred seven of this article,
38 subject to the limitations specified in said section, or upon conviction, such person may be
39 confined in jail not less than ninety days nor more than six months, or fined not more than \$1,000,
40 or both: *Provided*, That notwithstanding any other provision of this act to the contrary, any first
41 offense for possession of Synthetic Cannabinoids as defined by subdivision (32) subsection, (d),
42 section 101, article 1 of this chapter; 3,4-methylenedioxypropylone (MPVD) and 3,4-
43 methylenedioxypropylone and/or mephedrone as defined in subsection (f), section 101, article
44 1 of this chapter; or less than 15 grams of marijuana, shall be disposed of under said section.

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

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

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

53 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon
54 conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined
55 not more than \$5,000, or both. Any person being eighteen years old or more who violates
56 subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled
57 substance to a minor child who is at least three years younger than such person is guilty of a
58 felony and, upon conviction, may be imprisoned in the state correctional facility for not less than
59 one year nor more than three years, or fined not more than \$10,000, or both.

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

62 (e) If any person who possesses with the intent to deliver, manufactures or delivers a
63 controlled substance or imitation controlled substance while using or possessing a firearm, upon
64 a finding by the court that the firearm was used or possessed in connection with the possession
65 with the intent to deliver, manufacture or delivery of such substance, the court shall sentence the
66 person to serve a minimum of one third of the maximum sentence the person is eligible to serve
67 for such offense.

§60A-4-414. Conspiracy to distribute.

1 Any person who attempts or conspires to commit any offense defined in this article is
2 subject to the same penalties as those prescribed for the same offense which was the object of
3 to the attempt or subject conspiracy.

CHAPTER 61. CRIMES & THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-4a. Causing death by distribution of controlled substance.

1 Any person who, without intent to cause death, causes the death of a person by, directly
2 or indirectly, distributing a controlled substance as defined in section one hundred one, article
3 one, chapter sixty-a of this code, is guilty of involuntary manslaughter.

NOTE: The purpose of this bill is to address substance abuse and facilitate the reduction thereof; mandating the Governor's committee on crime, delinquency and correction on reforms to conduct a study of state drug sentencing laws; requiring the committee to coordinate school education program with law-enforcement officers; authorizing the Department of Health to promulgate rules regulating the exchange of syringes, and providing immunity for certain actions relating thereto; directing the State Board of Education to requiring each county board to provide substance abuse training education; directing State Board of Education to coordinate its activities with law enforcement and drug rehabilitation agencies; providing a penalty enhancement for use of a firearm during manufacture or distribution of controlled or imitation controlled substance; providing that an attempt or conspiracy to attempt to distribute controlled substances is the same as the actual act; and establishing new criminal penalty for causing death by distributing a controlled substance to that person.

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