

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2165**

BY DELEGATE R. MILLER

[ Introduced January 9, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §62-16-1 and §62-16-2, all relating to custody and disposal of seized  
3 controlled substances and drugs; creating a designated custodian evidence officer in each  
4 law-enforcement agency in the state; providing procedure for chemical analysis and  
5 destruction or disposal after a trial; providing procedure for collection and disposition of  
6 unused medicine or controlled substances found at the scene of a death; and providing  
7 that no criminal liability or professional discipline may be imposed for destroying unused  
8 medicine or controlled substances found at the scene of a death, when done in good faith.

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

**ARTICLE 16. CUSTODY AND DISPOSAL OF CONTROLLED SUBSTANCES.**

**§62-16-1. Seized controlled substances and narcotic drugs; custodian; mailing for  
chemical analysis; destruction or disposal upon completion of trial.**

1 (a) The Superintendent of the State Police, sheriff of a county, chief of police of any  
2 municipality or other officer or board at the head of each law-enforcement agency in this state  
3 shall appoint a law-enforcement officer to act as custodian of all controlled substances and  
4 narcotic drugs seized in the course of any arrest or investigation. The custodian shall be  
5 designated as the "evidence officer".

6 (b) Notwithstanding the provisions of any general or special law or rule or regulation to the  
7 contrary, controlled substances or narcotic drugs seized in cases under this chapter where the  
8 violation is a misdemeanor and, requiring chemical analyses which are to be performed at a  
9 certified laboratory may be hand delivered or mailed to or from the place of such analyses by  
10 using a registered mail service of the United States Postal Service. Testimony from a law-  
11 enforcement officer that he or she mailed or received the substances or narcotic drugs by  
12 registered mail together with the return receipts accompanying the mailing is prima facie evidence  
13 that the substances or drugs are the substances or drugs seized.

14 (c) At any time after the seizure of a controlled substance or narcotic drug, a prosecuting

15 attorney may petition the circuit court having jurisdiction to order the destruction of the controlled  
16 substance or narcotic drug seized in the course of any arrest or investigation: *Provided*, That  
17 when criminal prosecution is pending, the court shall order the state to give notice by certified or  
18 registered mail to the known defendant and his or her attorney and shall promptly, but not less  
19 than two weeks after notice, hold a hearing on the petition. At the hearing, the court shall hear  
20 evidence from the parties on the issue of destruction, the extent of the proposed destruction, the  
21 preservation of samples, the inspection, examination and testing of the controlled substance or  
22 narcotic drugs. The court, after the hearing, may order the forfeiture and destruction of the  
23 controlled substance or narcotic drug under procedures and to the extent determined by the court,  
24 with the remainder to be kept under the provisions of this section and shall thereupon issue a final  
25 order in writing.

26 The final order may provide for the analysis of representative and fair samples of the  
27 forfeited controlled substances or narcotic drugs by a chemist of the West Virginia State Police,  
28 who shall issue a signed certificate, under oath, of the results of the analysis. The certificate shall  
29 be sworn to before a notary public and is prima facia evidence of the composition and quality of  
30 the controlled substances or narcotic drugs when introduced as evidence before a grand jury or  
31 any court proceeding in this state. The order shall direct the evidence officer, upon completion of  
32 the analysis, to destroy or dispose the controlled substances or drugs in any way not prohibited  
33 by law: *Provided*, That the evidence officer shall make proper provisions for maintaining and  
34 securing such samples as may be directed by the court.

35 Upon completion of a trial or other disposition by the court and after the expiration of the  
36 period for an appeal from that trial or disposition, the court shall, in writing, order the forfeited  
37 controlled substances or narcotic drugs not destroyed prior thereto be destroyed or disposed of  
38 in any way not prohibited by law. If there is an appeal as prescribed by law, the evidence officer  
39 shall retain possession of the controlled substances or narcotic drugs until final disposition of the  
40 case, at which time the prosecuting attorney may petition the circuit court for summary destruction

41 of the controlled substances or narcotic drugs.

42 Each law-enforcement agency shall keep a record of the place where the controlled  
43 substances or narcotic drugs were seized, of the kinds and quantities of drugs received, by whose  
44 order the controlled substance or narcotic drugs were received, by whom the controlled substance  
45 or narcotic drugs were delivered and received, the date and manner of destruction or disposition  
46 of the controlled substances or narcotic drugs. Each law-enforcement agency shall submit a  
47 report, under oath, of the destruction or disposition to the court, which record shall be open to  
48 inspection by attorneys of record in the case and by all federal and state officers charged with  
49 enforcement of federal and state narcotic laws.

50 The West Virginia State Police shall keep a complete record of all drugs received and of  
51 all drugs disposed of, showing the exact kinds, quantities and forms of the drugs; the persons  
52 from whom received and the dates of receipt, disposal or destruction. The record shall be open  
53 to inspection by all federal and state officers charged with enforcement of federal and state  
54 narcotic laws.

**§62-16-2. Unused medications at scene of a death; destruction or disposal.**

1 (a) Notwithstanding any provision of law to the contrary, the Superintendent of the State  
2 Police, sheriff of a county, chief of police of any municipality or other officer or board at the head  
3 of each law-enforcement agency in this state may by rule authorize law-enforcement officers  
4 under their command to collect and dispose of unused medications found at the scene of a death  
5 the law-enforcement agency is investigating. A law-enforcement officer may only dispose of  
6 unused medications under this subsection after consulting with another investigating law-  
7 enforcement agency to ensure that the unused medications will not be needed as evidence in any  
8 investigation. This section does not apply to any unused medications a law-enforcement officer  
9 takes into custody as part of any investigation into a crime.

10 (b) Notwithstanding any provision of law to the contrary, a coroner or medical examiner  
11 may dispose of unused medications found at the scene of a death the coroner or medical

12 examiner is investigating. A coroner or medical examiner may only dispose of unused medications  
13 under this subsection after consulting with an investigating law-enforcement agency to ensure  
14 that the unused medications will not be needed as evidence in any investigation.

15 (c) To the extent allowed under state and federal law, pharmaceuticals collected under  
16 this section may be disposed of in a drug destruction device, or another state or federally  
17 approved medication take-back program or location.

18 (d) Prior to disposal of any medication collected as evidence in a criminal investigation  
19 under this section, a law-enforcement officer, coroner or medical examiner shall photograph the  
20 unused medication and its container or packaging, if available; document the number or amount  
21 of medication to be disposed of and include the photographs and documentation in the police  
22 report, coroner report or medical examiner report.

23 (e) If an autopsy is performed as part of a death investigation, no medication seized under  
24 this section may be disposed of until after a toxicology report is received by the entity requesting  
25 the report.

26 (f) If a law-enforcement officer, coroner or medical examiner is not present at the scene of  
27 a death, a nurse who is present while engaging in the performance of his or her duties may  
28 dispose of unused medications found at the scene of a death. A nurse may dispose of unused  
29 medications under this subsection only after consulting with an investigating law-enforcement  
30 agency to ensure that the unused medications will not be needed as evidence in an investigation.

31 (g) Each agency shall keep a complete record of all drugs received and of all drugs  
32 disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom  
33 received and the dates of receipt, disposal or destruction, which record shall be open to inspection  
34 by all federal and state officers charged with enforcement of federal and state narcotic laws.

35 (h) When an individual authorized to dispose of unused medication under this section  
36 disposes of unused medication under this section in good faith, the individual, and his or her  
37 employer, employees, and agents, shall incur no criminal liability or professional discipline.

38            (i) Nothing in this section may be construed to require a search of the scene for unused  
39    medications.

NOTE: The purpose of this bill is to clarify the procedure of handling seized controlled substances and drugs; designation of custodian by law enforcement; chemical analysis and disposal of seized controlled substances or drugs in misdemeanor investigations or collection; and authorization of collection and disposition of unused medicine or controlled substances at scene of a 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.