

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2526

FISCAL  
NOTE

BY DELEGATE SUMMERS AND STEELE

[Introduced January 18, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,  
2 relating to making it a crime to be intoxicated due to drug use while in public; and  
3 establishing the criminal penalty for public intoxication due to drug use.

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

#### **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 15 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 10 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 15 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 10 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 §60A-4-407 of this code, subject to the  
38 limitations specified in said section, or upon conviction, such person may be confined in jail not  
39 less than 90 days nor more than six months, or fined not more than \$1,000, or both: *Provided*,  
40 That notwithstanding any other provision of this act to the contrary, any first offense for possession  
41 of Synthetic Cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-  
42 methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone  
43 as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of  
44 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 18 years old or more who violates subdivision  
56 (1) of this subsection and, in so doing, distributes or delivers an imitation controlled substance to  
57 a minor child who is at least three years younger than such person is guilty of a felony and, upon  
58 conviction, may be imprisoned in the state correctional facility for not less than one year nor more  
59 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) A person may not appear in a public place in an intoxicated condition due to a  
63 controlled substance classified in Schedule I, II, III, or IV;

64 (1) Any law-enforcement officer may arrest without a warrant and take the following  
65 actions against a person who, in his or her presence, violates the provisions of subsection (e) of  
66 this section:

67 (2) If there is some nonintoxicated person who will accept responsibility for the intoxicated  
68 person, the officer may issue the intoxicated person a citation specifying a date for appearance  
69 before a judicial officer and release him or her to the custody of the individual accepting  
70 responsibility: *Provided*, That the issuance of a citation shall be used whenever feasible;

71 (3) If it does not impose an undue burden on the officer, he or she may, after issuance of  
72 a citation, transport the individual to the individual's present residence or arrange for the

73 transportation;

74 (4) If the individual is incapacitated or the alternatives provided in subdivisions (2) and (3)  
75 of this subsection are not possible, the officer shall transport or arrange for transportation to the  
76 appropriate judicial officer as defined by the provisions of §27-5-3 of this code; or

77 (5) If the individual is incapacitated and, in the law-enforcement officer's judgment, is in  
78 need of acute medical attention, that officer shall arrange for transportation by ambulance or  
79 otherwise to a hospital emergency room. The officer shall accompany the individual until he or  
80 she is discharged from the emergency room or admitted to the hospital. If the individual is released  
81 from the emergency room, the officer may proceed as described in subdivisions (2), (3), and (4)  
82 of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to  
83 the individual specifying a date for appearance before a judicial officer.

84 (A) Upon presentment before the proper judicial officer, the law-enforcement officer serves  
85 as the chief complaining witness. The judicial officer shall determine if there is probative evidence  
86 that the individual may be guilty of the charge of public intoxication. If such evidence is not  
87 presented, the charge shall be dismissed and the individual released. If sufficient evidence is  
88 presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the  
89 individual. Once a warrant or summons has been issued, the following actions may be taken:

90 (i) If the individual is no longer incapacitated, he or she may be released;

91 (ii) If the individual is still incapacitated but a nonintoxicated person is available to accept  
92 responsibility for him or her, he or she may be released to the responsible person; or

93 (iii) If the individual is still incapacitated and no responsible person is available, the judicial  
94 officer shall proceed under the provisions of §27-5-3 of this code.

95 (6) Any law-enforcement officer may arrest and hold in custody, without a warrant, until  
96 complaint may be made before a judicial officer and a warrant or summons issued, any person  
97 who, in the presence of the law-enforcement officer, violates the provisions of this subsection:  
98 Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself

99 or herself, the individual arrested, or others in carrying out the provisions of this section.

100 (7) Any person who violates the provisions of this subsection is guilty of a misdemeanor  
101 and, upon conviction thereof, such person may be confined in jail up to 30 days, or fined not more  
102 than \$100, or both: *Provided*, That notwithstanding any other provision of this act to the contrary,  
103 public intoxication due to synthetic cannabinoids as defined by §60A-1-101(d)(32); 3,4-  
104 methylenedioxypropylone (MPVD) and 3,4-methylenedioxypropylone and/or mephedrone  
105 as defined in §60A-1-101(f); or marijuana, shall incur a fine up to \$100.

106 (8) A person charged with a violation of the provisions of this subsection who is an addict  
107 shall be found not guilty by reason of addiction and proper disposition made pursuant to §27-6A-  
108 4 of this code.

109 (9) It is a defense to prosecution under the provisions of this subsection that the controlled  
110 substance was administered for therapeutic purposes and as a part of the person's professional  
111 medical treatment by a licensed physician.

NOTE: The purpose of this bill is to create an offense for public intoxication due to drug use.

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