

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2883

BY DELEGATES MILLER, STEELE, KESSINGER, ROHRBACH,

CANESTRARO, D. KELLY AND LOVEJOY

[Introduced February 7, 2019; Referred  
to the Committee on Prevention and Treatment of  
Substance Abuse then the Judiciary.]

1 A BILL to amend and reenact 60A-1-101 of the Code of West Virginia, 1931, as amended, relating  
 2 to expanding the definitions of locations where enhanced penalties for selling controlled  
 3 substances to a minor are applicable.

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

**ARTICLE 1. DEFINITIONS.**

**§60A-1-101. Definitions.**

1 As used in this act:

2 (a) "Administer" means the direct application of a controlled substance whether by  
 3 injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

4 (1) A practitioner (or, in his or her presence, by his or her authorized agent); or

5 (2) The patient or research subject at the direction and in the presence of the practitioner.

6 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a  
 7 manufacturer, distributor or dispenser. It does not include a common or contract carrier, public  
 8 warehouseman or employee of the carrier or warehouseman.

9 (c) "Analogue" means a substance that, in relation to a controlled substance, has a  
 10 substantially similar chemical structure.

11 (d) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States  
 12 Department of Justice" or its successor agency.

13 (e) "Controlled substance" means a drug, substance or immediate precursor in Schedules  
 14 I through V of article two of this chapter.

15 (f) "Counterfeit substance" means a controlled substance which, or the container or  
 16 labeling of which, without authorization, bears the trademark, trade name or other identifying  
 17 mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or  
 18 dispenser other than the person who in fact manufactured, distributed or dispensed the  
 19 substance.

20 (g) "Imitation controlled substance" means: (1) A controlled substance which is falsely

21 represented to be a different controlled substance; (2) a drug or substance which is not a  
22 controlled substance but which is falsely represented to be a controlled substance; or (3) a  
23 controlled substance or other drug or substance or a combination thereof which is shaped, sized,  
24 colored, marked, imprinted, numbered, labeled, packaged, distributed or priced so as to cause a  
25 reasonable person to believe that it is a controlled substance.

26 (h) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one  
27 person to another of: (1) A controlled substance, whether or not there is an agency relationship;  
28 (2) a counterfeit substance; or (3) an imitation controlled substance.

29 (i) "Dispense" means to deliver a controlled substance to an ultimate user or research  
30 subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering,  
31 packaging, labeling or compounding necessary to prepare the substance for that delivery.

32 (j) "Dispenser" means a practitioner who dispenses.

33 (k) "Distribute" means to deliver, other than by administering or dispensing, a controlled  
34 substance, a counterfeit substance or an imitation controlled substance.

35 (l) "Distributor" means a person who distributes.

36 (m) "Drug" means: (1) Substances recognized as drugs in the official "United States  
37 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National  
38 Formulary", or any supplement to any of them; (2) substances intended for use in the diagnosis,  
39 cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than  
40 food) intended to affect the structure or any function of the body of man or animals; and (4)  
41 substances intended for use as a component of any article specified in subdivision (1), (2) or (3)  
42 of this subdivision. It does not include devices or their components, parts or accessories.

43 (n) "Fentanyl analog or derivative" means any substance which has a chemical structure  
44 which is substantially similar to the chemical structure of fentanyl, including any of its salts,  
45 isomers, or salts of isomers, including any chemical compound or mixture. For purposes of this  
46 chapter, the term "fentanyl derivative or analog" includes any fentanyl analog that is not otherwise

47 scheduled in this chapter.

48 (o) "Immediate derivative" means a substance which is the principal compound or any  
49 analogue of the parent compound manufactured from a known controlled substance primarily for  
50 use and which has equal or similar pharmacologic activity as the parent compound which is  
51 necessary to prevent, curtail or limit manufacture.

52 (p) "Immediate precursor" means a substance which is the principal compound commonly  
53 used or produced primarily for use and which is an immediate chemical intermediary used or likely  
54 to be used in the manufacture of a controlled substance, the control of which is necessary to  
55 prevent, curtail or limit manufacture.

56 (q) "Manufacture" means the production, preparation, propagation, compounding,  
57 conversion or processing of a controlled substance, either directly or indirectly or by extraction  
58 from substances of natural origin, or independently by means of chemical synthesis, or by a  
59 combination of extraction and chemical synthesis, and includes any packaging or repackaging of  
60 the substance or labeling or relabeling of its container, except that this term does not include the  
61 preparation, compounding, packaging or labeling of a controlled substance:

62 (1) By a practitioner as an incident to his or her administering or dispensing of a controlled  
63 substance in the course of his or her professional practice; or

64 (2) By a practitioner, or by his or her authorized agent under his or her supervision, for the  
65 purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

66 (r) "Marijuana" means all parts of the plant "Cannabis sativa L.", whether growing or not;  
67 the seeds thereof; the resin extracted from any part of the plant; and every compound,  
68 manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It  
69 does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made  
70 from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture  
71 or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the  
72 sterilized seed of the plant which is incapable of germination.

73 (s) "Narcotic drug" means any of the following, whether produced directly or indirectly by  
74 extraction from substances of vegetable origin or independently by means of chemical synthesis,  
75 or by a combination of extraction and chemical synthesis:

76 (1) Opium and opiate and any salt, compound, immediate derivative or preparation of  
77 opium or opiate.

78 (2) Any salt, compound, isomer, immediate derivative or preparation thereof which is  
79 chemically equivalent or identical with any of the substances referred to in paragraph (1) of this  
80 subdivision, but not including the isoquinoline alkaloids of opium.

81 (3) Opium poppy and poppy straw.

82 (4) Coca leaves and any salt, compound, immediate derivative or preparation of coca  
83 leaves and any salt, compound, isomer, immediate derivative or preparation thereof which is  
84 chemically equivalent or identical with any of these substances, but not including decocainized  
85 coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

86 (t) "Opiate" means any substance having an addiction-forming or addiction-sustaining  
87 liability similar to morphine or being capable of conversion into a drug having addiction-forming  
88 or addiction-sustaining liability. It does not include, unless specifically designated as controlled  
89 under section two hundred one, article two of this chapter, the dextrorotatory isomer of 3-methoxy-  
90 n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and  
91 levorotatory forms.

92 (u) "Opium poppy" means the plant of the species "Papaver somniferum L.", except its  
93 seeds.

94 (v) "Person" means individual, corporation, government or governmental subdivision or  
95 agency, business trust, estate, trust, partnership or association, or any other legal entity.

96 (w) "Placebo" means an inert medicament or preparation administered or dispensed for  
97 its psychological effect, to satisfy a patient or research subject or to act as a control in  
98 experimental series.

99 (x) "Playground" means any outdoor facility, including any parking lot appurtenant thereto,  
100 used for recreation, open to the public, and with any portion thereof containing three or more  
101 separate apparatus intended for the recreation of children.

102 ~~(y)~~ (y) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

103 ~~(z)~~ (z) "Practitioner" means:

104 (1) A physician, dentist, veterinarian, scientific investigator or other person licensed,  
105 registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to  
106 administer a controlled substance in the course of professional practice or research in this state.

107 (2) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to  
108 distribute, dispense, conduct research with respect to, or to administer a controlled substance in  
109 the course of professional practice or research in this state.

110 ~~(aa)~~ (aa) "Production" includes the manufacture, planting, cultivation, growing or harvesting  
111 of a controlled substance.

112 ~~(bb)~~ (bb) "State", when applied to a part of the United States, includes any state, district,  
113 commonwealth, territory, insular possession thereof and any area subject to the legal authority of  
114 the United States of America.

115 (cc) "Swimming pool" includes the area immediately surrounding the pool, and any parking  
116 lot appurtenant thereto.

117 ~~(dd)~~ (dd) "Ultimate user" means a person who lawfully possesses a controlled substance  
118 for his or her own use or for the use of a member of his or her household or for administering to  
119 an animal owned by him or her or by a member of his or her household.

120 (ee) "Video arcade facility" means any facility, legally accessible to persons under 18 years  
121 of age, intended primarily for use of pinball and video machines for amusement containing a  
122 minimum of 10 pinball or video machines.

123 (ff) "Youth center" means any recreational facility or gymnasium, including any parking lot  
124 appurtenant thereto, intended primarily for use by persons under 18 years of age, which regularly

125 provides athletic, civic, or cultural activities.

NOTE: The purpose of this bill is to include additional locations where enhance penalties for selling controlled substances to a minor are applicable.

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