

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 502

FISCAL
NOTE

BY SENATORS IHLENFELD, HARDESTY, JEFFRIES,
LINDSAY, PALUMBO, STOLLINGS, WOELFEL, BALDWIN,
HAMILTON, AND FACEMIRE

[Introduced January 15, 2020; 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 methamphetamine; and amending criminal penalty.

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 or which
5 is methamphetamine, is guilty of a felony and, upon conviction, may be ~~imprisoned~~ confined in
6 the state correctional facility for not less than one year nor more than 15 years, or fined not more
7 than \$25,000, or both;

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

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

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

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

20 Any person who violates this subsection with respect to:

21 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, and

22 methamphetamine, which for the intent of this section shall be treated as a narcotic, is guilty of a
23 felony and, upon conviction, may be ~~imprisoned~~ confined in the state correctional facility for not
24 less than one year nor more than 15 years, or fined not more than \$25,000, or both;

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

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

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

35 (c) It is unlawful for any person knowingly or intentionally to possess a controlled
36 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or
37 order of a practitioner while acting in the course of his professional practice, or except as
38 otherwise authorized by this act. Any person who violates this subsection is guilty of a
39 misdemeanor and, disposition may be made under §60A-4-407 of this code, subject to the
40 limitations specified in said section, or upon conviction, such person may be confined in jail not
41 less than 90 days nor more than six months, or fined not more than \$1,000, or both: *Provided*,
42 That notwithstanding any other provision of this act to the contrary, any first offense for possession
43 of Synthetic Cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-
44 methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone
45 as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of
46 under said section.

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

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

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

55 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon
56 conviction, may be ~~imprisoned~~ confined in jail for not less than six months nor more than one
57 year, or fined not more than \$5,000, or both. Any person being 18 years old or more who violates
58 subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled
59 substance to a minor child who is at least three years younger than such person is guilty of a
60 felony and, upon conviction, may be imprisoned in the state correctional facility for not less than
61 one year nor more than three years, or fined not more than \$10,000, or both.

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

NOTE: The purpose of this bill is to increase the punishment for methamphetamine trafficking.

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