

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

## **Senate Bill 49**

By Senators Hamilton and Hunt

[Introduced January 11, 2023; referred to  
the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-401, §60A-4-407, and §60A-4-407a of the Code of West  
 2 Virginia, 1931, as amended, all relating to establishing the criminal offense of using or  
 3 being under the influence of a controlled substance unless obtained directly from, or  
 4 pursuant to, a valid prescription or order of a practitioner; providing criminal penalties for  
 5 violation; providing for conditional discharge of offense for first violation; and providing  
 6 additional conditions for authorizing additional requirements to obtain a final order of  
 7 discharge and dismissal.

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

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-401. Prohibited acts; penalties.**

1 (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or  
 2 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 is  
 5 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state  
 6 correctional facility for not less than one year nor more than 15 years, or fined not more than  
 7 \$25,000, or both fined and imprisoned;

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

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

14 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction  
 15 thereof, may be confined in jail for not less than six months nor more than one year, or fined not  
 16 more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any

17 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in  
18 said article apply.

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

21 Any person who violates this subsection with respect to:

22 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or  
23 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state  
24 correctional facility for not less than one year nor more than 15 years, or fined not more than  
25 \$25,000, or both fined and imprisoned;

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

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

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

37 (c) It is unlawful for any person knowingly or intentionally to possess, use, consume, or be  
38 under the influence of a controlled substance unless the substance was obtained directly from, or  
39 pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her  
40 professional practice, or except as otherwise authorized by this act. Any person who violates this  
41 subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this  
42 code, subject to the limitations specified in said section, or upon conviction thereof, the person

43 may be confined in jail not less than 90 days nor more than six months, or fined not more than  
44 \$1,000, or both fined and confined: *Provided*, That notwithstanding any other provision of this act  
45 to the contrary, any first offense for possession, use, consumption, or being under the influence of  
46 synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-  
47 methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone  
48 as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of  
49 under §60A-4-407 of this code.

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

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

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

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

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

**§60A-4-407. Conditional discharge for first offense of possession, use, consumption, or  
being under the influence of a controlled substance.**

1           (a) Whenever any person who has not previously been convicted of any offense under this  
2 chapter or under any statute of the United States or of any state relating to narcotic drugs,  
3 marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of  
4 possession, use, consume, or being under the influence of a controlled substance under section  
5 401(c), the court, without entering a judgment of guilt and with the consent of the accused, may  
6 defer further proceedings and place him or her on probation upon terms and conditions. Upon  
7 violation of a term or condition, the court may enter an adjudication of guilt and proceed as  
8 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the  
9 person and dismiss the proceedings against him or her. Discharge and dismissal under this  
10 section shall be without adjudication of guilt and is not a conviction for purposes of this section or  
11 for purposes of disqualifications or disabilities imposed by law upon conviction of a crime,  
12 including the additional penalties imposed for second or subsequent convictions under section  
13 408. The effect of the dismissal and discharge shall be to restore the person in contemplation of  
14 law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and  
15 discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or  
16 otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or  
17 her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only  
18 one discharge and dismissal under this section with respect to any person.

19           (b) After a period of not less than six months which shall begin to run immediately upon the  
20 expiration of a term of probation imposed upon any person under this chapter, the person may  
21 apply to the court for an order to expunge from all official records all recordations of his or her  
22 arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the  
23 person during the period of his or her probation and during the period of time prior to his or her  
24 application to the court under this section has not been guilty of any serious or repeated violation  
25 of the conditions of his or her probation, it shall order the expungement.

26           (c) Notwithstanding any provision of this code to the contrary, any person prosecuted

27 pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of  
28 this section shall be liable for any court costs assessable against a person convicted of a violation  
29 of section 401(c) of this article. Payment of such costs may be made a condition of probation.

30 The costs assessed pursuant to this section, whether as a term of probation or not, shall be  
31 distributed as other court costs in accordance with §50-3-2, §14-2A-4, §30-29-4, and §62-5-2,  
32 §62-5-7, and §62-5-10 of this code.

**§60A-4-407a. Authorizing additional requirements to obtain a final order of discharge and  
dismissal for persons charged with possession, use, consumption, or being under  
the influence of controlled substances.**

1 (a) Notwithstanding any provision of this code to the contrary, when a person pleads guilty  
2 or is found guilty of a violation of §60A-4-401(c) of this code, or a municipal ordinance containing  
3 the same elements where the controlled substance possessed is listed in §60A-2-204 of this code,  
4 other than marijuana, or is a controlled substance listed in §60A-2-206, §60A-2-208, or §60A-2-  
5 210 of this code, the court may, as an additional condition for the entry of a final order of discharge  
6 or dismissal under §60A-4-407 of this code or a municipal ordinance containing the same or  
7 substantially the same provision, require the defendant to be:

- 8 (1) Evaluated for admission into a drug court program; or  
9 (2) Participate in a drug treatment program.

10 (b) If a defendant is determined to be an appropriate candidate for admission to drug court  
11 or a drug treatment program, the court may make successful completion of a drug court or a drug  
12 treatment program a requirement for obtaining a final order of discharge and dismissal.