

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**Senate Bill 547**

BY SENATORS DEEDS, AZINGER, HUNT, KARNES,  
OLIVERIO, QUEEN, ROBERTS, STUART, TAYLOR,  
WOODRUM, SMITH, MAYNARD, HAMILTON, WELD, AND  
TRUMP

[Originating in the Committee on the Judiciary;  
reported on February 24, 2023]



1 A BILL to amend and reenact §60A-4-401, §60A-4-409, §60A-4-414, and §60A-4-416, all relating  
2 to controlled substances violations; increasing sentences for certain controlled substances  
3 offenses; making certain offenses ineligible for suspension or probation, or alternative  
4 sentencing; making possession of Schedule I and II narcotics and methamphetamine a  
5 felony; expressing legislative intent; authorizing reduction from felony to misdemeanor  
6 under certain circumstances; declaring that minimum period of 10 years' incarceration for  
7 the offense of drug delivery death; requiring inert substances mixed with controlled  
8 substances to be considered a controlled substance for purposes of weight measurement;  
9 and modifying sentences for certain offenses.

*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 thereof, may be imprisoned in a  
6 state correctional facility for not less than ~~one year~~ three years nor more than 15 years, or fined  
7 not more than ~~\$25,000~~ \$50,000, or both fined and imprisoned; ~~Provided, That any person who~~  
8 ~~violates this section knowing that the controlled substance classified in Schedule II is fentanyl,~~  
9 ~~either alone or in combination with any other substance shall be fined not more than \$50,000, or~~  
10 ~~be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both~~  
11 ~~fined and imprisoned;~~

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

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

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

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

25 ~~Any person who violates this subsection with respect to:~~

26 ~~(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or~~  
27 ~~methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state~~  
28 ~~correctional facility for not less than one year nor more than 15 years, or fined not more than~~  
29 ~~\$25,000, or both fined and imprisoned;~~

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

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

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

41 who willfully manufactures, delivers, or possesses with the intent to manufacture or deliver one  
42 kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more  
43 of phencyclidine, 10 grams or more of lysergic acid diethylamide, 50 grams or more of  
44 methamphetamine, or five grams or more of fentanyl, is guilty of a felony and, upon conviction  
45 thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not  
46 less than 10 nor more than 30 years, or fined not more than \$100,000, or both fined and  
47 imprisoned.

48 (c)(1) It is unlawful for any person knowingly or intentionally to possess a controlled  
49 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or  
50 order of a practitioner while acting in the course of his or her professional practice, or except as  
51 otherwise authorized by this act. Any person who violates this subsection is guilty of a  
52 misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the  
53 limitations specified in said section, or upon conviction thereof, the person may be confined in jail  
54 not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and  
55 confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first  
56 offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code;  
57 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or  
58 mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall  
59 be disposed of under §60A-4-407 of this code.

60 (2) Notwithstanding the provisions of subdivision (1) of this subsection, possession of a  
61 controlled substance classified in Schedule I or II which is a narcotic drug or which is  
62 methamphetamine is a felony, and upon conviction, the person shall be imprisoned in a state  
63 correctional facility for not less than one year nor more than five years: *Provided*, That a person  
64 charged pursuant to this subdivision may, upon successful completion of a court ordered or  
65 approved drug treatment program, have his or her offense revert to a misdemeanor with

66 disposition under subdivision (1) of this subsection: *Provided*, That the modification in law effected  
67 by the amendment to this subsection enacted during the 2023 Regular Session of the Legislature  
68 is expressly designed to assist in getting persons unlawfully using controlled substances in  
69 Schedules I and II which are narcotic drugs or methamphetamine in obtaining treatment for any  
70 substance abuse issue they may have; *Provided, however*, That the legislature recommends that  
71 courts and prosecuting attorneys, where possible, avail themselves of the full panoply of  
72 sentencing alternatives available in code, including but not limited to the provisions of §62-11B-  
73 1, et seq., §62-11C-1, et seq. §62-11F-1 et seq. , and §62-13-1, et seq.

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

75 (1) ~~To create, distribute, deliver, or possess with intent to distribute or deliver, an imitation~~  
76 ~~controlled substance; or~~

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

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

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

91 (d) Notwithstanding the provisions of subsection (a) of this section, any person who  
92 willfully manufactures or delivers or possesses with intent to manufacture or deliver not less than  
93 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine  
94 or cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one  
95 but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50  
96 grams of methamphetamine, or one gram or more but less than five grams of fentanyl, is guilty of  
97 a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an  
98 indeterminate sentence of not less than five nor more than twenty years, or fined not more than  
99 \$75,000, or both fined and imprisoned.

100 (e) For purposes of determining the weight of any controlled substance under this section,  
101 a mixture must contain only a detectable amount of a controlled substance for the entire mixture  
102 to be considered that controlled substance. If a mixture or substance contains more than one  
103 controlled substance, the weight of the entire mixture or substance is assigned to the controlled  
104 substance that results in the greater offense penalty.

105 (f) Under this section, where one act involves two or more controlled substances, the  
106 manufacture, delivery, or possession with intent to manufacture or deliver of each controlled  
107 substance shall be considered a separate and distinct offense unless the controlled substances  
108 are mixed together.

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

111 Any person who violates this subsection with respect to:

112 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or  
113 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state  
114 correctional facility for not less than one year nor more than 15 years, or fined not more than  
115 \$25,000, or both fined and imprisoned;

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

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

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

127 ~~(e)~~ (h) It is unlawful for any person knowingly or intentionally:

128 (1) To adulterate another controlled substance using fentanyl as an adulterant;

129 (2) To create a counterfeit substance or imitation controlled substance using fentanyl; or

130 (3) To cause the adulteration or counterfeiting or imitation of another controlled substance  
131 using fentanyl.

132 (4) Any person who violates this subsection is guilty of a felony and, upon conviction  
133 thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15  
134 years, or fined not more than \$50,000, or both fined and imprisoned.

135 (5) For purposes of this section:

136 (i) A controlled substance has been adulterated if fentanyl has been mixed or packed with  
137 it; and

138 (ii) Counterfeit substances and imitation controlled substances are further defined in §60A-  
139 1-101 of this code.

**§60A-4-409. Prohibited acts – Transportation of controlled substances into state;  
penalties.**



1 (a) Except as otherwise authorized by the provisions of this code, it is unlawful for any  
2 person to transport or cause to be transported into this state a controlled substance with the intent  
3 to deliver the same or with the intent to manufacture a controlled substance.

4 (b) Any person who violates this section with respect to:

5 (1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be  
6 guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility  
7 for not less than ~~one~~ five years nor more than ~~45~~ 20 years, or fined not more than ~~\$25,000~~ \$50,000  
8 or both fined and imprisoned. ~~Provided, That any person who violates this section knowing that~~  
9 ~~the controlled substance classified in Schedule II is fentanyl, either alone or in combination with~~  
10 ~~any other substance shall be fined not more than \$50,000 or imprisoned in a state correctional~~  
11 ~~facility for a definite term of not less than 10 nor more than 20 years, or both fined and imprisoned~~

12 (2) Any other controlled substance classified in Schedule I, II or III ~~shall be~~ is guilty of a  
13 felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not  
14 less than one year nor more than 10 years, or fined not more than \$15,000, or both: *Provided,*  
15 That for the substance marijuana, as scheduled in ~~subdivision (24) subsection (d),~~ §60A-2-  
16 204(d)(24) of this code, the penalty, upon conviction of a violation of this subsection, shall be that  
17 set forth in subdivision (3) of this subsection.

18 (3) A substance classified in Schedule IV ~~shall be~~ is guilty of a felony and, upon conviction  
19 thereof, may be imprisoned in the state correctional facility for not less than one year nor more  
20 than five years, or fined not more than \$10,000, or both;

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

26 (c) Notwithstanding the provisions of subsection (b) of this section, any person violating  
27 or causing a violation of subsection (a) of this section involving one kilogram or more of heroin,  
28 ~~five kilograms~~ one kilogram or more of cocaine or cocaine base, 100 grams or more of  
29 phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of  
30 methamphetamine, or five grams or more of fentanyl ~~500 grams of a substance or material~~  
31 ~~containing a measurable amount of methamphetamine~~, is guilty of a felony and, upon conviction  
32 thereof, shall be imprisoned in a state correctional facility for a ~~determinate~~ an indeterminate  
33 sentence of not less than ~~two~~ 15 nor more than 30 years.

34 (d) Notwithstanding the provisions of subsection (b) of this section, any person violating  
35 or causing a violation of subsection (a) of this section involving 100 but fewer than 1,000 grams  
36 of heroin, not less than ~~500~~ 100 but fewer than ~~5,000~~ 1,000 grams of cocaine or cocaine base,  
37 not less than 10 but fewer than 99 grams of phencyclidine, not less than one but fewer than 10  
38 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of  
39 methamphetamine ~~or not less than 50 grams but fewer than 500 grams of a substance or material~~  
40 ~~containing a measurable amount of methamphetamine~~, or one gram or more but less than five  
41 grams of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
42 correctional facility for a ~~determinate~~ an indeterminate sentence of not less than ~~two~~ 7 nor more  
43 than 20 years.

44 (e) Notwithstanding the provisions of subsection (b) of this section, any person violating  
45 or attempting to violate the provisions of subsection (a) of this section involving not less than 10  
46 grams nor more than 100 grams of heroin, not less than ~~50~~ 10 grams nor more than ~~500~~ 100  
47 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of  
48 phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid  
49 diethylamide, or not less than ~~499 milligrams~~ one gram nor more than five grams of  
50 methamphetamine ~~or not less than 20 grams nor more than 50 grams of a substance or material~~  
51 ~~containing a measurable amount of methamphetamine~~ or less than one gram of fentanyl is guilty

52 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a  
53 ~~determinate~~ an indeterminate sentence of not less than ~~two~~ 5 nor more than ~~45~~ 20 years.

54 (f) The offense established by this section shall be in addition to and a separate and  
55 distinct offense from any other offense set forth in this code.

56 (g) For purposes of determining the weight of any controlled substance under this section,  
57 a mixture must contain only a detectable amount of a controlled substance for the entire mixture  
58 to be considered that controlled substance. If a mixture or substance contains more than one  
59 controlled substance, the weight of the entire mixture or substance is assigned to the controlled  
60 substance that results in the greater offense penalty.

61 (h) Under this section, where the transportation into the state involves two or more  
62 controlled substances, the transportation into the state of each controlled substance shall be  
63 considered a separate and distinct offense unless the controlled substances are mixed together.

64 (5)-(i) The sentences provided in this section upon conviction for a violation of this article  
65 are mandatory and are not subject to suspension or probation.

**§60A-4-414. Conspiracy.**

1 (a) Any person who willfully conspires with one or more persons to commit a felony  
2 violation of ~~section four hundred one~~ §60A-4-401 of this ~~article~~ code, if one or more of such  
3 persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon  
4 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence  
5 of not less than two nor more than 10 years: *Provided*, That the provisions of this subsection are  
6 inapplicable to felony violations of ~~section four hundred one~~ §60A-4-401 of this ~~article~~ code  
7 prohibiting the manufacture, delivery or possession with intent to manufacture or deliver  
8 marijuana.

9 (b) Notwithstanding the provisions of subsection (a) of this section, any person who  
10 willfully conspires with one or more persons to manufacture, deliver or possess with intent to  
11 manufacture or deliver one kilogram or more of heroin, ~~five kilograms~~ one kilogram or more of

12 cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid  
13 diethylamide, or 50 grams or more of methamphetamine, or ~~five hundred grams of a substance~~  
14 ~~or material containing a measurable amount of methamphetamine~~ five grams or more of fentanyl,  
15 if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a  
16 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a  
17 ~~determinate~~ an indeterminate sentence of not less than ~~two~~ 5 nor more than thirty years.

18 (c) Notwithstanding the provisions of subsection (a) of this section, any person who  
19 willfully conspires with one or more persons to manufacture, deliver or possess with intent to  
20 manufacture or deliver not less than 100 but fewer than 1,000 grams of heroin, not less than ~~five~~  
21 ~~hundred~~ 100 but fewer than ~~five thousand~~ 1,000 grams of cocaine or cocaine base, not less than  
22 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of  
23 lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or  
24 ~~not less than fifty grams but fewer than five hundred grams of a substance or material containing~~  
25 ~~a measurable amount of methamphetamine~~ one gram or more but less than five grams of fentanyl,  
26 if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a  
27 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a  
28 ~~determinate~~ an indeterminate sentence of not less than ~~two~~ three nor more than 20 years.

29 (d) Notwithstanding the provisions of subsection (a) of this section, any person who  
30 willfully conspires with one or more persons to manufacture, deliver, possess with intent to  
31 manufacture, or deliver not less than 10 grams nor more than 100 grams of heroin, not less than  
32 ~~fifty~~ 10 grams nor more than ~~five hundred~~ 100 grams of cocaine or cocaine base, not less than  
33 two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than  
34 one gram of lysergic acid diethylamide, or not less than ~~four hundred ninety-nine milligrams~~ one  
35 gram nor more than five grams of methamphetamine or ~~not less than twenty grams nor more than~~  
36 ~~fifty grams of a substance or material containing a measurable amount of methamphetamine or~~  
37 less than one gram of fentanyl, if one or more of such persons does any act to effect the object

38 of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
39 correctional facility for ~~a determinate~~ an indeterminate sentence of not less than two nor more  
40 than 15 years.

41 (e) The trier of fact shall determine the quantity of the controlled substance attributable to  
42 the defendant beyond a reasonable doubt based on evidence adduced at trial.

43 (f) The determination of the trier of fact as to the quantity of controlled substance  
44 attributable to the defendant in a charge under this section may include all of the controlled  
45 substances manufactured, delivered, or possessed with intent to deliver or manufacture by other  
46 participants or members of the conspiracy.

47 (g) For purposes of determining the weight of any controlled substance under this section,  
48 a mixture must contain only a detectable amount of a controlled substance for the entire mixture  
49 to be considered that controlled substance. If a mixture or substance contains more than one  
50 controlled substance, the weight of the entire mixture or substance is assigned to the controlled  
51 substance that results in the greater offense penalty.

52 (h) Under this section, where the conspiracy involves two or more controlled substances,  
53 each controlled substance shall be considered a separate and distinct offense unless the  
54 controlled substances are mixed together.

55 ~~(g)~~ (i) Offenses in this section proscribing conduct involving lesser quantities are lesser  
56 included offenses of offenses proscribing conduct involving larger quantities.

57 ~~(h)~~ (j) A person may be charged under the provisions of §61-10-61, of this code for conduct  
58 that is charged under this section.

59 ~~(i)~~ (k) Nothing in this section may be construed to place any limitation whatsoever upon  
60 alternative sentencing options available to a court.

**§60A-4-416. Drug delivery resulting in death; failure to render aid.**

1 (a) Any person who knowingly and willfully delivers a controlled substance or counterfeit  
2 controlled substance in violation of the provisions of §60A-4-401 of this ~~chapter~~ code, for an illicit

3 purpose and the use, ingestion, or consumption of the controlled substance or counterfeit  
4 controlled substance alone or in combination with one or more other controlled substances,  
5 proximately causes the death of a person using, ingesting, or consuming the controlled  
6 substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
7 correctional facility for a determinate sentence of not less than ~~three~~ 10 years nor more than ~~15~~  
8 ~~years~~ 40 years. A person imprisoned pursuant to the provisions of this section is not eligible for  
9 parole prior to having served a minimum of 10 years of his or her sentence.

10 (b) Any person who, while engaged in the illegal use of a controlled substance with  
11 another, ~~who~~ knowingly fails to seek medical assistance for ~~such~~ the other person when the other  
12 person suffers an overdose of the controlled substance or suffers a significant adverse physical  
13 reaction to the controlled substance and the overdose or adverse physical reaction proximately  
14 causes the death of the other person, is guilty of a felony and, upon conviction thereof, shall be  
15 imprisoned for not less than ~~one year~~ two years nor more than ~~five~~ 10 years. A person imprisoned  
16 pursuant to the provisions of this section is not eligible for parole prior to having served a minimum  
17 of two years of his or her sentence.

18 (c) The sentences provided in this section are mandatory and are not subject to  
19 suspension or probation.