

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2613

By Delegates Clay, Pritt, Brooks, DeVault, T. Howell,
Willis, Maynor, Chiarelli, Adkins, Linville, and Bridges

(By Request)

[Introduced February 19, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-401, §60A-4-409, §60A-4-414, and §60A-4-416 of the Code
 2 of West Virginia, 1931, as amended, relating to controlled substances violations;
 3 increasing sentences for certain controlled substances offenses; making certain offenses
 4 ineligible for suspension, probation, or alternative sentencing; making possession of
 5 Schedule I and II narcotics and methamphetamine a felony; expressing legislative intent;
 6 authorizing reduction from felony to misdemeanor under certain circumstances; declaring
 7 a minimum period of 10 years' incarceration for the offense of drug delivery death;
 8 requiring inert substances mixed with controlled substances to be considered a controlled
 9 substance for purposes of weight measurement; setting forth a method for measurement
 10 where more than one controlled substance is in a mixture; and modifying sentences for
 11 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, 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~~ three years nor more than 15 years, or fined not more
 7 than ~~\$25,000~~ \$50,000, or both fined and imprisoned; ~~Provided, That any person who violates this~~
 8 ~~section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or~~
 9 ~~in combination with any other substance shall be fined not more than \$50,000, or be imprisoned in~~
 10 ~~a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned~~

11 (ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and,
 12 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one

13 year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

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

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

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

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

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

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

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

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

39 ~~said article apply~~ Notwithstanding the provisions of subsection (a) of this section, any person who
40 willfully manufactures, delivers, or possesses with the intent to manufacture or deliver one
41 kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more
42 of phencyclidine, 10 grams or more of lysergic acid diethylamide, 50 grams or more of
43 methamphetamine, or five grams or more of fentanyl, is guilty of a felony and, upon conviction
44 thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less
45 than 10 nor more than 30 years, or fined not more than \$100,000, or both fined and imprisoned.

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

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

64 disposition under subdivision (1) of this subsection: *Provided, however,* That the modification in
65 law effected by the amendment to this subsection enacted during the 2025 Regular Session of the
66 Legislature is expressly designed to assist in getting persons unlawfully using controlled
67 substances in Schedules I and II which are narcotic drugs or methamphetamine in obtaining
68 treatment for any substance abuse issue they may have: *Provided further,* That the Legislature
69 recommends that courts and prosecuting attorneys, where possible, avail themselves of the full
70 panoply of sentencing alternatives available in code, including but not limited to the provisions of
71 §62-11B-1 *et seq.*, §62-11C-1 *et seq.*, §62-11F-1 *et seq.*, and §62-13-1 *et seq.*.

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

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

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

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

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

89 (d) Notwithstanding the provisions of subsection (a) of this section, any person who willfully

90 manufactures or delivers or possesses with intent to manufacture or deliver not less than 100 but
91 fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or
92 cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but
93 fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of
94 methamphetamine, or one gram or more but less than five grams of fentanyl, is guilty of a felony
95 and, upon conviction thereof, shall be imprisoned in a state correctional facility for an
96 indeterminate sentence of not less than five nor more than 20 years, or fined not more than
97 \$75,000, or both fined and imprisoned.

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

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

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

109 Any person who violates this subsection with respect to:

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

114 (ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and,
115 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one

116 year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

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

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

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

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

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

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

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

133 (5) For purposes of this section:

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

136 (ii) Counterfeit substances and imitation controlled substances are further defined in §60A-
137 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 year~~ five years nor more than ~~15~~ 20 years, or fined not more than \$25,000
8 \$50,000 or both fined and imprisoned. ~~Provided, That any person who violates this section~~
9 ~~knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in~~
10 ~~combination with any other substance shall be fined not more than \$50,000 or imprisoned in a~~
11 ~~state correctional facility for a definite term of not less than 10 nor more than 20 years, or both fined~~
12 ~~and imprisoned~~

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

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

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

27 (c) Notwithstanding the provisions of subsection (b) of this section, any person violating or
28 causing a violation of subsection (a) of this section involving one kilogram or more of heroin, ~~five~~
29 ~~kilograms~~ one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine,

30 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine, or five
31 grams or more of fentanyl, ~~500 grams of a substance or material containing a measurable amount~~
32 ~~of methamphetamine~~ is guilty of a felony and, upon conviction thereof, shall be imprisoned in a
33 state correctional facility for a ~~determinate~~ an indeterminate sentence of not less than ~~two~~ 15 nor
34 more than 30 years.

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

45 (e) Notwithstanding the provisions of subsection (b) of this section, any person violating or
46 attempting to violate the provisions of subsection (a) of this section involving not less than 10
47 grams nor more than 100 grams of heroin, not less than ~~50~~ 10 grams nor more than ~~500~~ 100
48 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of
49 phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid
50 diethylamide, or not less than ~~499 milligrams~~ one gram nor more than five grams of
51 methamphetamine or ~~not less than 20 grams nor more than 50 grams of a substance or material~~
52 ~~containing a measurable amount of methamphetamine~~ or less than one gram of fentanyl is guilty
53 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a
54 ~~determinate~~ an indeterminate sentence of not less than ~~two~~ 5 nor more than ~~45~~ 20 years.

55 (f) The offense established by this section shall be in addition to and a separate and distinct

56 offense from any other offense set forth in this code.

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

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

65 (i) The sentences provided in this section upon conviction for a violation of this article are
66 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 of
5 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 willfully
10 conspires with one or more persons to manufacture, deliver or possess with intent to manufacture
11 or deliver one kilogram or more of heroin, ~~five kilograms~~ one kilogram or more of cocaine or
12 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 or~~
14 ~~material containing a measurable amount of methamphetamine~~ five grams or more of fentanyl, if

15 one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony
16 and, upon conviction thereof, shall be imprisoned in a state correctional facility for a ~~determinate~~
17 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 a~~
25 ~~measurable amount of methamphetamine~~ one gram or more but less than five grams of fentanyl, if
26 one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony
27 and, upon conviction thereof, shall be imprisoned in a state correctional facility for a ~~determinate~~
28 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 two
33 grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one
34 gram of lysergic acid diethylamide, or not less than ~~four hundred ninety-nine milligrams~~ one gram
35 nor more than five grams of methamphetamine or ~~not less than twenty grams nor more than fifty~~
36 ~~grams of a substance or material containing a measurable amount of methamphetamine~~ or less
37 than one gram of fentanyl, if one or more of such persons does any act to effect the object of the
38 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 than
40 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 to
49 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 substance,

6 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
7 for a determinate sentence of not less than ~~three~~ 10 years nor more than ~~15 years~~ 40 years. A
8 person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having
9 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.

NOTE: The purpose of this bill is to increase and modify sentences for certain controlled substances offenses; make certain offenses ineligible for suspension, probation, or alternative sentencing; make possession of Schedule I and II narcotics and methamphetamine a felony; authorize reduction from felony to misdemeanor under certain circumstances; declare a minimum period of 10 years' incarceration for the offense of drug delivery death; require inert substances mixed with controlled substances to be considered a controlled substance for purposes of weight measurement; and set forth a method for measurement where more than one controlled substance is in a mixture.

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