WEST VIRGINIA CODE CHAPTER 60A ARTICLE 4

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

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and imprisoned: *Provided*, That any person who violates this section when the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than $50,000, or be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

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

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

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

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

Any person who violates this subsection with respect to:

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

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

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

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

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

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

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

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

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

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who

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administers or dispenses a placebo.

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

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

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

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

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

(5) For purposes of this section:

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

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

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§60A-4-402. Prohibited acts B; penalties.

(a) It is unlawful for any person:

(1) Who is subject to article 3 to distribute or dispense a controlled substance in violation of section 308;

(2) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this act;

(4) To refuse any entry into any premises for any inspection authorized by this act; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this act for the purpose of using these substances, or which is used for keeping or selling them in violation of this act.

(b) Any person who violates this section is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than $25,000, or both.

(c) Notwithstanding any other provision of this act to the contrary, any first offense for distributing less than 15 grams of marihuana without any remuneration shall be disposed of under section 407.

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§60A-4-403. Prohibited acts C; penalties.

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

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by section 307 of this act;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, suspended, revoked, or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, theft, deception, or subterfuge;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act; or

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a felony and, upon conviction, may be imprisoned in a correctional facility for not less than one year nor more than four years, or fined not more than $30,000, or both.

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§60A-4-403a. Prohibition of illegal drug paraphernalia businesses; definitions; places deemed common and public nuisances; abatement; suit to abate nuisances; injunction; search warrants; forfeiture of property; penalties.

[Repealed.]

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§60A-4-404. Penalties under other laws.

Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

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§60A-4-405. Bar to prosecution.

If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

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§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21; distribution by persons 18 or over in, on, or within 1,000 feet of, school or college; distribution by persons 18 or over in, on, or within 200 feet of a public library; increasing mandatory period of incarceration prior to parole eligibility.

(a) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of three years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(i) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution;

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(b) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of two years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(ii) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution;

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(c) The existence of any fact which would make any person subject to the provisions of this section may not be considered unless the fact is clearly stated and included in the indictment

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or presentment by which the person is charged and is either:

(1) Found by the court upon a plea of guilty or nolo contendere;

(2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a special interrogatory for such purpose; or

(3) Found by the court, if the matter be tried by the court without a jury.

(d) Nothing in this section limits the sentencing alternatives made available to circuit court judges under other provisions of this code.

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§60A-4-407. Conditional discharge for first offense of possession.

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

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

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

The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty, section four, article two-a, chapter fourteen, section four, article twenty-nine, chapter thirty and sections two, seven and ten, article five, chapter sixty-two of this code.

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§60A-4-407a. Authorizing additional requirements to obtain a final order of discharge and dismissal for persons charged with possession of controlled substances.

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

(1) Evaluated for admission into a drug court program; or

(2) Participate in a drug treatment program.

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

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§60A-4-408. Second or subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both. When a term of imprisonment is doubled under section 406, such term of imprisonment shall not be further increased for such offense under this subsection (a), even though such term of imprisonment is for a second or subsequent offense.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under section 401(c).

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

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

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

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than five years nor more than 20 years, or fined not more than $50,000, or both fined and imprisoned.

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

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

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

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving one kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or five or more grams of fentanyl, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than 15 years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or

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cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than seven years nor more than 20 years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than 10 grams nor more than 100 grams of heroin, not less than 10 grams nor more than 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than one gram nor more than five grams of methamphetamine, or less than one gram of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than five years nor more than 20 years.

(f) The offenses established by this section are in addition to and a separate and distinct offense from any other offense set forth in this code.

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

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

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§60A-4-410. Prohibited acts -- Withholding information from practitioner; additional controlled substances; penalties.

(a) It is unlawful for a patient, in an attempt to obtain a prescription for a controlled substance, to knowingly withhold from a practitioner, that the patient has obtained a prescription for a controlled substance of the same or similar therapeutic use in a concurrent time period from another practitioner.

(b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not more than nine months, or fined not more than $2,500, or both fined and confined.

(c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set forth in this code.

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§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.

(a) Any person who operates or attempts to operate a clandestine drug laboratory is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two years nor more than ten years or fined not less than $5,000 nor more than $25,000, or both.

(b) Any person who operates or attempts to operate a clandestine drug laboratory and who as a result of, or in the course of doing so, causes to be burned any dwelling, outbuilding, building or structure of any class or character is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(c) For purposes of this section, a “clandestine drug laboratory” means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof for the purpose of manufacturing methamphetamine, methylenedioxymethamphetamine or lysergic acid diethylamide in violation of the provisions of section four hundred one of this article.

(d) The offenses in subsections (a) and (b) of this section are separate and distinct offenses and subsection (a) of this section shall not be construed to be a lesser included offense of subsection (b) of this section.

(e) For purposes of section one, article two of this chapter, both subsection (a) and (b) of this section shall be deemed qualifying felony offenses of manufacturing and delivery of a controlled substance.

(f) Any person convicted of a violation of subsection (a) or (b) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory.

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§60A-4-412. Defeating drug and alcohol screening tests; penalties.

(a) Any person who:

(1) Knowingly sells, gives away, distributes or markets any substance or product in this state or transports such a substance or product into this state with the intent that the substance or product will be used to defeat a drug or alcohol screening test;

(2) Attempts to defeat a drug or alcohol screening test by the substitution of a false sample;

(3) Knowingly advertises for sale or distribution any substance or product the advertised purpose of which is to defeat a bodily fluid screening test for drugs or alcohol;

(4) Adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening test;

(5) Knowingly possesses adulterants for the purpose of defeating a drug or alcohol screening test; or

(6) Knowingly sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test.

(b) A person who violates a provision of subsection (a) of this section:

(1) For a first offense is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000;

(2) For a second offense is guilty of a misdemeanor and, upon conviction, be fined not more than $5,000; and

(3) For a third or subsequent offense is guilty of a misdemeanor and, upon conviction, be fined not more than $10,000 or confined in the regional jail for not more than one year, or both.

(c) As used in this section, "adulterate" means a substance that is not expected to be in human fluids but that is a concentration so high that it is not consistent with human bodily fluids, including, but not limited to:

(1) Bleach;

(2) Chromium;

(3) Creatinine;

(4) Detergent;

(5) Glutaraldehyde;

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(6) Glutaraldehyde/squalene;

(7) Hydrochloric acid;

(8) Hydroiodic acid;

(9) Iodine;

(10) Nitrite;

(11) Peroxidase;

(12) Potassium dichromate;

(13) Potassium nitrate;

(14) Pyridinium chlorochromate; and

(15) Sodium nitrite.

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§60A-4-413. Unlawful production, manufacture or possession of Salvia divinorum.

(a) For purposes of this section, "Salvia divinorum" means an herb belonging to the Lamiaceae family, genus of Salvia, species of divinorum, with common names including, but not limited to, "Salvia," "Ska Pastora," "Shepherdess's Herb," "Maria Pastora," "yerba de Maria," "Purple Sticky" and "Sally-D."

(b) It is unlawful for any person to knowingly or intentionally manufacture or possess an extract, compound, concentrate, or other processed substance intended for human consumption which contains Salvia divinorum, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a licensed physician or dispensed by a pharmacist for a recommended or medically necessary therapeutic use. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not more than six months, or fined not more than $1,000, or both. Notwithstanding any other provision of this code to the contrary, any first offense for possession of Salvia divinorum shall be disposed of under section four hundred seven of this article.

(c) The provisions of this section shall not apply to licensed physicians, pharmacists, and accredited hospitals and teaching facilities engaged in the research or study of Salvia divinorum, and shall not include any person participating in clinical trials involving the use of Salvia divinorum.

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§60A-4-414. Conspiracy.

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

(b) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver or possess with intent to manufacture or deliver one kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine, or five grams or more of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than five years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(c) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver, or possess with intent to manufacture or deliver not less than 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than three years nor more than 20 years.

(d) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver, possess with intent to manufacture or deliver not less than 10 grams nor more than 100 grams of heroin, not less than 10 grams nor more than 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less one gram nor more than five grams of methamphetamine, or less than one gram of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than two years nor more than 15 years.

(e) The trier of fact shall determine the quantity of the controlled substance attributable to

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the defendant beyond a reasonable doubt based on evidence adduced at trial.

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

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

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

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

(j) A person may be charged under the provisions of §61-10-31 of this code for conduct that is charged under this section.

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§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of fentanyl.

[Repealed.]

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

(a)(1) Any person who knowingly and willfully delivers a controlled substance or counterfeit controlled substance, without receiving or accepting money or any other thing of value, in violation of the provisions of §60A-4-401 of this code for an illicit purpose and the use, ingestion or consumption of the controlled substance or counterfeit controlled substance alone or in combination with one or more other controlled substances, proximately causes the death of a person using, ingesting or consuming the controlled substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 15 years.

(2) Any person who knowingly and willfully delivers a controlled substance or counterfeit controlled substance in exchange for money or any other thing of value in violation of the provisions of §60A-4-401 of this code for an illicit purpose and the use, ingestion or consumption of the controlled substance or counterfeit controlled substance alone or in combination with one or more other controlled substances, proximately causes the death of a person using, ingesting or consuming the controlled substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than ten nor more than 40 years. A person imprisoned pursuant to the provisions of this subdivision is not eligible for parole prior to having served a minimum of 10 years of his or her sentence.

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

(c) The sentence provided in subdivision (2), subsection (a) of this section is mandatory. A person convicted of an offense set forth in subdivision (2), subsection (a) of this section is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(d) As used in this section:

(1) The phrase “engaged in illegal use of a controlled substance with another person” means being in the physical presence of a person engaged in illegal drug use and participating with him or her in illegal drug use, or while in the presence of a person engaged in illegal drug use knowingly facilitating illegal drug use by the other person so engaged.

(2) “Seek medical assistance” means contacting the 9-1-1 emergency system, a poison control facility, any type of first responder, a medical facility or medical professional capable

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of treating an overdose, and in the case of an opioid overdose, to administer or cause the administration of a commercially produced medically recognized opioid antagonist.

(e) The revisions to subsections (a), (b), (c), and (d) of this section enacted during the 2025 regular legislative session shall be known as Lauren's Law.

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§60A-4-417. Sale of dextromethorphan.

(a) As used in this section, "finished drug product" means a drug legally marketed under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) that is in finished dosage form.

(b) A person may not knowingly or willfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person under 18 years of age.

(c) A person under 18 years of age, unless an emancipated minor, may not purchase a finished drug product containing any quantity of dextromethorphan.

(d) A person making a retail sale of a finished drug product containing any quantity of dextromethorphan shall require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser’s outward appearance the person making the sale would reasonably presume the purchaser to be at least 25 years of age.

(e) This section does not apply to a medication containing dextromethorphan that is sold pursuant to a valid prescription.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and shall be fined not less than $100 nor more than $250.

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§60A-4-418. Use of a minor to commit a felony drug offense; penalties.

Any person over the age of 21 who knowingly and intentionally causes, aids, abets, or encourages a person under the age of 18 to distribute, dispense, manufacture, or possess with the intent to distribute a controlled substance in violation or the provisions of this chapter is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility for not more than five years, or both fined and imprisoned.

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§60A-4-419. Drug kingpin.

(a) For purposes of this section, "drug kingpin" means an organizer, supervisor, financier, or manager who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State of West Virginia a controlled dangerous substance.

(b)(1) Notwithstanding the provisions of §60A-4-414 of this code, a drug kingpin who conspires to manufacture, distribute, dispense, transport in, or bring into the State of West Virginia a controlled dangerous substance in an amount listed in §60A-4-414(b) of this code is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than 10 nor more than 40 years and fined not more than $100,000.

(2) The sentence provided in this section is mandatory. A person convicted of an offense set forth in this section is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(c) It is not a defense to a prosecution under this section that the controlled substance was brought into or transported in the State of West Virginia solely for ultimate distribution or dispensing in another jurisdiction.

(d) The offenses set forth in this section are in addition to and separate and distinct from any other offenses set forth in this code.

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