

FEDERAL

DRUG ABUSE OFFENSES AND PENALTIES

EXPCITE-

TITLE 21 - FOOD AND DRUGS
CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I - CONTROL AND ENFORCEMENT
Part D - Offenses and Penalties

-HEAD- Sec. 841. Prohibited acts A

-STATUTE-

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

HEAD-Sec. 844. Penalties for simple possession

-STATUTE-

(a) Unlawful acts; penalties

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section [823](#) of this title or section [958](#) of this title if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of \$1,000, or both, except that if he commits such offense after aprior conviction under this subchapter or subchapter II of this chapter, or a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of \$2,500, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II of this chapter, or two or more prior convictions for any drug, narcotic, or chemical offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of \$5,000. Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of \$1,000, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram. Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years, shall be fined as otherwise provided in this section, or both. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

(b) Repealed. Pub. L. 98-473, title II, Sec. 219(a), Oct. 12, 1984, 98 Stat. 2027

(c) "Drug, narcotic, or chemical offense" defined As used in this section, the term "drug, narcotic, or chemical offense" means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this subchapter.

HEAD-Sec. 844a. Civil penalty for possession of small amounts of certain controlled substances

-STATUTE-

(a) In general Any individual who knowingly possesses a controlled substance that is listed in section 841(b)(1)(A) of this title in violation of section regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each such violation.

HEAD- Sec. 853. Criminal forfeitures

-STATUTE-

(a) Property subject to criminal forfeiture Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law -

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise. The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes -

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

HEAD-Sec. 859. Distribution to persons under age twenty-one

-STATUTE-

(a) First offense

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b) of this section) subject to (1) twice the maximum punishment authorized by section 841(b) of this title, and (2) at least twice any term of supervised release authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.

(b) Second offense

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) has become final, is subject to (1) three times the maximum punishment authorized by section 841(b) of this title, and (2) at least three times any term of supervised release authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title

-HEAD-Sec. 860. Distribution or manufacturing in or near schools and colleges

-STATUTE-

(a) Penalty

Any person who violates section 841(a)(1) of this title or section [856](#) of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand 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, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b) of this section) subject to (1) twice the maximum punishment authorized by section [841\(b\)](#) of this title; and (2) at least twice any term of supervised release authorized by section [841\(b\)](#) of this title for a first offense. A fine up to twice that authorized by section [841\(b\)](#) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section [841\(b\)](#) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

(b) Second offenders

Any person who violates section 841(a)(1) of this title or section [856](#) of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand 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, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) of this section has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section [841\(b\)](#) of this title for a first offense, and (2) at least three times any term of supervised release authorized by section [841\(b\)](#) of this title for a first offense. A fine up to three times that authorized by section [841\(b\)](#) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section [841\(b\)](#) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section [841\(b\)\(b\)\(1\)\(A\)](#) of this title.

HEAD- Sec. 862. Denial of Federal benefits to drug traffickers and possessors

-STATUTE-

(a) Drug traffickers

(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances shall -

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all Federal benefits for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all Federal benefits for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all Federal benefits.

(2) The benefits which are denied under this subsection shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(b) Drug possessors

(1) Any individual who is convicted of any Federal or State offense involving the possession of a controlled substance (as such term is defined for purposes of this subchapter) shall -

(A) upon the first conviction for such an offense and at the discretion of the court -

(i) be ineligible for any or all Federal benefits for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of clause (i), (ii), or (iii); and

(B) upon a second or subsequent conviction for such an offense be ineligible for all Federal benefits for up to 5 years after such conviction as determined by the court. The court shall continue to have the discretion in subparagraph (A) above. In imposing penalties and conditions under subparagraph (A), the court may require that the completion of the conditions imposed by clause (ii) or (iii) be a requirement for the reinstatement of benefits under clause (i).

(2) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(c) Suspension of period of ineligibility

The period of ineligibility referred to in subsections (a) and (b) of this section shall be suspended if the individual -

(A) completes a supervised drug rehabilitation program after becoming ineligible under this section;

(B) has otherwise been rehabilitated; or

(C) has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.

(d) Definitions

As used in this section -

(1) the term "Federal benefit" -

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

(2) the term "veterans benefit" means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

HEAD- Sec. 862a. Denial of assistance and benefits for certain drug-related convictions

-STATUTE-

(a) In general An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 802(6) of this title) shall not be eligible for -

(1) assistance under any State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or

(2) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h))) or any State program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

STATE OF WEST VIRGINIA CODE

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

§60-1-1. Purpose of chapter; declaration of legislative findings, policy and intent.

The purpose of this chapter is to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment; and it is hereby found by the Legislature and declared to be the public policy of this state to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of alcoholic liquors and at the same time to assure the greatest degree of personal freedom consistent with the health, safety, welfare, peace and good morals of the people of this state. To these ends the police power of this state is pledged to the sound control and the temperate use of alcoholic liquors. In order to further promote and foster the hereinabove policy of the Legislature, the provisions of this chapter and of the rules and regulations promulgated pursuant thereto shall be construed so as to accomplish and effectuate these stated purposes.

§60-1-2. Applicability of chapter.

A person shall not sell, possess for sale, transport, or distribute alcoholic liquors in this state except in accordance with the provisions of this chapter.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person shall not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;

(4) Tender a drink of alcoholic liquor to another person in a public place;

(5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the said commissioner therefor; or

(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of such a citation, transport the individual to the individual's present residence or arrange for such transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by section seventeen, article eleven, chapter twenty-seven of this code; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer shall serve as the chief complaining witness. The judicial officer must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he or she may be released; (2) if the individual is still incapacitated but a nonintoxicated person is available to

accept responsibility for him or her, he or she may be released to the responsible person; or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor more than one hundred dollars. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health -- mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in the county or regional jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health -- mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than sixty days in county or regional jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health -- mental retardation center: *Provided*, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: *Provided, however*, That for the educational counseling programs described in this subsection the community mental health -- mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars; and upon a second or subsequent conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in the county or regional jail not more than sixty days, or both.

(h) Any person who violates subdivision (3), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in the county or regional jail not more than sixty days, or both.

(i) Any person who violates subdivision (4) or (5), subsection (a) of this section shall be guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars; and upon conviction of second or subsequent offense, he or she shall be guilty of a felony and shall be confined in the penitentiary of this state for a period of not less than one year nor more than three years.

§60-8-20a. Unlawful acts by persons.

(a) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves wine or other alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: *Provided*, That such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any

member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing wine or other alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase wine or other alcoholic liquors, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one to whom they are not related by blood or marriage, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

CHAPTER 60.A UNIFORMED CONTROLLED SUBSTANCE ACT

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; 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, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A substance classified in Schedule IV, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A substance classified in Schedule V, 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 five thousand dollars, or both.

(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, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A counterfeit substance classified in Schedule IV, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A counterfeit substance classified in Schedule V, 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 five thousand dollars, or both.

(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 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 section 407, subject to the limitations specified in said section 407, or upon conviction, such person may be confined in the county jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: *Provided*, That notwithstanding any other provision of this act to the contrary, any first offense for possession of less than 15 grams of marihuana shall be disposed of under said section 407.

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

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

or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such 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, may be imprisoned in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more, who violates subdivision (1) of this subsection, and, in so doing distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

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

§60A-4-406. Distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thousand feet of, school or college; 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 for service of a sentence of incarceration and is convicted of a felony violation under the provisions of subdivision (i), subsection (a), section four hundred one of this article for distribution of a controlled substance and:

(1) Is twenty-one 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 eighteen years at the time of the distribution; or

(2) Is eighteen years of age or older and the distribution upon which the conviction is based occurred in or on, or within one thousand 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.

City of Charleston, WV Codes and Ordinances:

Chapter 6 ALCOHOLIC BEVERAGES*

Sec. 6-91. Prohibited drinking and prohibited possession.

It shall be unlawful for any person to:

- (1) Drink alcoholic liquor in a public place.
- (2) Drink alcoholic liquor in a motor vehicle upon any street, open space or in a public garage.
- (3) Tender a drink of alcoholic liquor to another person in a public place or in any place mentioned in subsection (2) of this section.
- (4) Possess alcoholic liquor in an amount in excess of one gallon, in containers not bearing stamps or seals of the state liquor control commission, without having first obtained written authority from that commission.
- (5) Possess any alcoholic liquor which he knows or should know was manufactured or acquired in violation of the provisions of W. Va. Code ch. 60

Sec. 6-92. Transportation of alcoholic liquors for purpose of sale; presumption arising in certain cases.

No person shall transport alcoholic liquors for the purpose of sale without authorization from the state liquor control commission. Transportation of alcoholic liquors in a quantity in excess of one gallon, except pursuant to a permit issued by the state liquor control commission, shall be prima facie evidence of transportation for the purpose of sale.

Sec. 6-93. Other specific acts forbidden.

No person shall, under circumstances not constituting a felony:

- (1) Manufacture or sell in the city, without a state license to do so, any alcoholic liquor except as may be permitted by W. Va. Code ch. 60, art. 6 (W. Va. Code § 60-6-1 et seq.).
- (2) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by W. Va. Code ch. 60, art. 6 (W. Va. Code § 60-6-1 et seq.).
- (3) Adulterate any alcoholic liquor by the addition of any drug; methyl alcohol; crude, unrectified or impure form of ethyl alcohol; or other foreign or deleterious substance or liquor.

Chapter 78 OFFENSES AND MISCELLANEOUS PROVISIONS*

Sec. 78-211. Drunkenness in public place; drinking or possession of alcoholic beverages in public; sale and use of nonintoxicating beer or other alcoholic beverages; penalties.

- (a) It shall be unlawful for any person to appear in a public place while under the influence of an intoxicating liquor, marijuana or other drugs or narcotics, in such a condition as to be unable to exercise care for his own safety or the safety of others.
- (b) It shall be unlawful to serve drinks or possess open or unsealed containers of alcoholic liquor, beer, wine or any other alcoholic beverage or nonintoxicating beer in any public place in the city except as otherwise provided by law and authorized in writing by the chief of police.
- (c) It shall be unlawful for any person to inhale any natural, artificial or pharmaceutical substance, including model glue, gasoline or paint, whether gaseous, liquid or solid, the fumes of which when inhaled by a human being cause a condition of or induce or produce symptoms of intoxication or other irrational behavior or distort or disturb the audio, visual or mental process.
- (d) It shall be unlawful for any person, licensee, his or its servants, agents or employees, to sell, furnish or give any nonintoxicating beer or intoxicating liquor to any person under the age of 21 years.
- (e) It shall be unlawful for any person over the age of 21 to buy for or give to or supply in any manner nonintoxicating beer or intoxicating liquor to a person under the age of 21.
- (f) Any person who violates this section shall be subject to the general penalties set forth in section 1-8.
- (g) The officer has the discretion to issue either a citation or make an arrest.

Sec. 78-371. Possession of 15 grams or less of marihuana; first offense; probation; expungement of records; subsequent offenses.

- (a) It shall be unlawful, under circumstances constituting a first offense under W. Va. Code § 60A-4-407 for any person in the city to knowingly or intentionally possess 15 grams or less of marihuana.
- (b) Any person who pleads guilty to or is found guilty of a violation of subsection (a) of this section shall be placed on probation for a period of 30 days.
- (c) Upon fulfillment of the terms and conditions of probation, the municipal court shall discharge the person and dismiss the proceedings against him. The effect of such dismissal and discharge shall be to restore such person in contemplation of law to the status he occupied prior to such arrest and trial. No person as to whom such dismissal and discharge have been effected shall be held to be guilty of perjury, false swearing or otherwise giving a false statement by reason of his failure to disclose or acknowledge such arrest or trial in response to any inquiry made of him for any purpose. There may be only one discharge and dismissal under this section with respect to any person.
- (d) 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 section, such person may apply to the municipal court for an order to expunge from all official records all recordation of his arrest, trial and conviction pursuant to this section. If the municipal judge determines that such person during the period of such probation and during the period of time prior to his application to the municipal court under this section has not been guilty of any serious or repeated violation of the conditions of such probation, he shall enter such order.
- (e) Any person convicted of a second or subsequent offense under this section may be fined up to \$500.00 and/or sentenced to 30 days in jail. 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 Code or under any state statute or statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant or hallucinogenic drugs.

Sec. 78-372. Purporting to sell controlled substances.

- (a) No person shall at any time sell any substance which that person purports to be a controlled substance, as defined under schedules I through V of article II of the Uniform Controlled Substances Act (W. Va. Code § 60A-2-201 et seq.) when in actuality the substance sold contains no controlled substances.
- (b) Whoever violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor and fined not more than \$100.00 or be imprisoned for a period not to exceed 30 days, or both. Subsequent violations upon conviction shall be punishable by a mandatory \$100.00 fine and, in the discretion of the court, imprisonment not to exceed 30 days. (Code 1975, § 18-44.2)

Sec. 78-373. Illegal possession of controlled substances.

- (a) *Prohibited.* It is unlawful for any person knowingly or intentionally to possess a controlled substance, specifically a drug, substance or immediate precursor in schedules I through V as set forth in W. Va. Code §§ 60A-2-204, 60A-2-206, 60A-2-208, 60A-2-210 and 60A-2-212 (W. Va. Code § 60A-2-204 et seq.), 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 professional practice, or except as otherwise authorized. Any person who violates this section is guilty of a misdemeanor and may be fined up to \$500.00 and/or sentenced to 30 days in jail; however, notwithstanding any other provision of this division to the contrary, any first offense for possession of 15 grams or less of marihuana shall be disposed of under section 78-371(e).
- (b) *Conditional discharge for first offense of possession.*
 - (1) Whenever any person who has not previously been convicted of any offense under this Code or under any state statute or statute of the United States relating to narcotic drugs, marihuana, or stimulants, depressant or hallucinogenic drugs pleads guilty to or is found guilty of possession of a controlled substance under this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place such persons 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. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purpose of this section or for purpose of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent

convictions. The effect of such dismissal and discharge shall be to restore such person in contemplation of law to the status he occupied prior to such arrest and trial. No person as to whom such 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 failure to disclose or acknowledge such arrest or trial in response to any inquiry made of him for any purpose. There may be only one discharge and dismissal under this section with respect to any person.

(2) 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 division, such person may apply to the court for an order to expunge from all official records all recordings of his arrest, trial and conviction pursuant to this section.