



# **WEST VIRGINIA UNIVERSITY**

## **DRUG-FREE SCHOOLS AND COMMUNITIES ACT**

FOR

WEST VIRGINIA UNIVERSITY

Potomac State College of West Virginia University  
West Virginia University Institute of Technology

Dear Fellow Employees:

West Virginia University, including its divisional campuses of Potomac State College of West Virginia University and West Virginia University Institute of Technology (collectively the “University”) is concerned with the well-being of its employees in all aspects of University life. The abuse of alcohol and the use of illegal drugs by members of the University community is incompatible with the goals of an academic institution. Drug and alcohol abuse on campus hinders the learning process, jeopardizing the University’s mission to educate students and prepare them for responsible participation in society. With a combination of education and counseling, students and employees can be made aware of the consequences that may arise from drug and alcohol abuse and avoid activities that threaten their wellbeing.

As directed by federal law, the University is providing this information to you because it explains the University’s drug and alcohol prevention policies for students and employees. The unlawful possession, use, or distribution of alcohol and illegal drugs on campus and at University functions is prohibited.

The University recognizes that alcoholism and drug dependencies are diseases which affect not only the student or employee, but also one’s family, workplace, and community. Referral services for alcohol and drug abuse counseling and treatment are provided by the University for students, faculty, and staff. A list of support and treatment centers may be found on page eight.

West Virginia University is committed to building a community in which the abuse of drugs and alcohol is recognized not just as self-destructive behavior, but also as detrimental to the whole community. As a part of the University’s compliance efforts with state and federal law, I urge you to read the attached information. If you have any questions or comments concerning any of the information, please contact:

West Virginia University  
Division of Talent and Culture - Employee Relations  
[EmployeeRelations@mail.wvu.edu](mailto:EmployeeRelations@mail.wvu.edu)  
Telephone: (304) 293-5700 ext. 5

Thank you for your cooperation in assuring that West Virginia University is a drug and alcohol free workplace and community.

Sincerely,



Cris DeBord

Vice President for Talent and Culture

# West Virginia University Alcohol and Other Drug Policies

## I. Drug-Free Workplace Act of 1988

## II. General Requirements of the Drug-Free Schools and Communities Act: Amendments of 1989

## III. Drug-Induced Rape Prevention and Punishment Act of 1996

## IV. West Virginia University Controlled Substance and Alcohol Use Testing

## V. Health Risks Associated with the Use and Abuse of Alcohol and Illicit Drugs

## VI. Federal and State Legal Sanctions Concerning Drugs and Alcohol

\*Please note that this handbook **does not** contain complete recitations of applicable laws and therefore should be used for general reference only.

### I. Drug-Free Workplace Act of 1988

*Purpose:* To comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101, *et seq.*; 22 C.F.R. Part 513; 48 C.F.R. § 23.504; 48 C.F.R. § 52.223-6; and other portions of the Code of Federal Regulations applicable to federal contractors).

*Coverage:* All West Virginia University employees, including faculty, classified and non-classified staff, administrators, and student employees.

*Prohibitions:* (a) The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace; (b) Reporting for work under the influence of a controlled substance is prohibited.

#### A. Notice to Employees

As a condition of University employment, every employee shall (1) abide by the terms of this policy and (2) notify his/her supervisor and the Division of Human Resources of any conviction of drug or alcohol related charges resulting from any activity occurring in the workplace or otherwise on University premises no later than five (5) days after such conviction.

#### B. Disciplinary Sanctions

Any employee found in violation of this provision shall be subject to disciplinary action, up to and including termination, and may be required to participate in a drug abuse assistance or drug rehabilitation program.

#### C. Awareness

West Virginia University has established awareness programs for students, faculty, and staff through the Faculty and Staff Assistance Program (FSAP) and the Student Assistance Program (SAP). Educational programs have been established by FSAP and SAP for the purpose of educating employees and students regarding the nature and consequences of drug and alcohol dependency and/or abuse. These two programs inform individuals about the policy of maintaining

a drug-free workplace and also address the dangers of alcohol and drug abuse in the workplace, as well as provide appropriate information, education, consultation, and referral.

The Faculty and Staff Assistance Program (FSAP) may be reached at 304-293-5590. The Student Assistance Program (SAP) may be reached at 304-293-6972. Effective March 17, 1989, the University will:

- Notify employees of the policy regarding drug-free workplace;
- Provide a copy of the policy and procedures as part of the award package on all grants received by the University;
- Provide a copy of the policy to each new employee at the time of initial employment processing;
- Notify the contracting agency or others, if required, within ten (10) days after receiving notice from an employee or otherwise receiving notice of a drug related conviction;
- Impose sanctions as stated earlier within thirty (30) days of receiving notice from an employee of a criminal drug statute conviction in the workplace.

## **II. General Requirements of the Drug-Free Schools and Communities Act: Amendments of 1989**

*Purpose:* To comply with the Drug-Free Schools and Communities Act Amendments of 1989 (20 U.S.C. § 1011i; 34 C.F.R. Part 86).

*Coverage:* All West Virginia University employees, including faculty, classified and non-classified staff, administrators, and students.

*Prohibitions:* Employees and students in violation of West Virginia University's standards concerning drugs and alcohol.

The Drug-Free Schools and Communities Act Amendments of 1989 require an institution of higher education, as a condition of receiving funds or any other form of financial assistance under any federal program, to certify that it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees.

### **A. Standards of Conduct**

The unlawful possession, use, or distribution of illicit drugs and alcohol by students or employees on University property or as part of any other University regulated activities is prohibited.

As part of its drug prevention program for students and employees, West Virginia University annually distributes in writing to each student and employee the following information:

- Standards of conduct that clearly prohibit the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as a part of any of its activities.

- A description of applicable local, state, and federal legal sanctions pertaining to the unlawful possession, use, or distribution of illicit drugs and the abuse of alcohol.
- A description of health risks associated with the use of illicit drugs and the abuse of alcohol.
- A description of available drug and alcohol counseling, treatment, rehabilitation, and re-entry programs.
- A clear statement of the disciplinary sanctions that the University will impose upon students and employees who violate the standards of conduct.

The University will conduct a biennial review of its drug prevention program to determine its effectiveness, implement needed changes, determine the number of drug and alcohol-related violations and fatalities that occur on campus or as part of the University's activities, and ensure that disciplinary sanctions are consistently enforced.

## **B. Disciplinary Sanctions**

The University will impose disciplinary sanctions on students and employees (faculty, classified, and non-classified staff) who violate the above standards of conduct. Any student who violates these standards will be subject to disciplinary sanctions up to and including expulsion from the University and referral for prosecution. Employees should be aware that violation of these standards of conduct will subject them to sanctions up to and including immediate termination and referral for prosecution. Students, faculty, and staff should consult the student catalog or handbook, the Student Code of Conduct, the West Virginia University Classified Employee's Handbook, or the West Virginia University Faculty Handbook for review of the specific sanctions which may apply.

## **III. Drug-Induced Rape Prevention and Punishment Act of 1996**

*Purpose:* To comply with the Drug-Induced Rape Prevention and Punishment Act of 1996 (21 U.S.C. § 841(b)(7)(A)-(B); *see also* 21 U.S.C. § 801).

*Coverage:* All West Virginia University employees, including faculty, classified and non-classified staff, administrators, and students.

*Prohibitions:* It is unlawful to distribute a controlled substance to an individual without that individual's knowledge with intent to commit a crime of violence, including rape. "Without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

### **A. Standards of Conduct**

See Section II.A.

## **B. Disciplinary Sanctions**

Any students or employees found in violation of this provision shall be subject to disciplinary action, up to and including expulsion or termination.

## **IV. West Virginia University Controlled Substance and Alcohol Use Testing**

*Purpose:* To comply with the requirements of the Federal Motor Carrier Safety Administration (49 C.F.R. Part 382 *et seq.*) and the Federal Transit Administration (49 C.F.R. Part 655 *et seq.*); Drug-Free Workplace Act, 1988 (41 U.S.C. § 8101, *et seq.*); Drug-Free Schools and Communities Act Amendments, 1989 (20 U.S.C. § 1011i; 34 C.F.R. 86.1 *et seq.*).

*Coverage:* Drug and alcohol testing is federally required for all professional drivers and safety-sensitive employees including interim, temporary, casual, classified, non-classified, faculty, students, and volunteer workers.

*Prohibitions:* The illegal use of controlled substances and the misuse of alcohol by professional drivers of large trucks, passenger buses, and vehicles transporting hazardous materials or employees in other safety-sensitive roles.

### **A. Standards of Conduct**

The University will impose testing on employees whose duties require, or individuals who apply for positions that require, the possession of a valid Commercial Driver License (CDL); those responsible for the operation/driving, maintenance, and/or controlling dispatch or movement of regulated vehicles; individuals whose duties require the possession of a firearm for security purposes; and/or other employees in safety-sensitive roles as determined by the University.

### **B. Disciplinary Sanctions**

Employees who use alcohol or illegal drugs or substances while on duty as a driver or in other safety-sensitive roles are subject to disciplinary sanctions up to and including termination.

## **V. Health Risks Associated with the Use and Abuse of Alcohol and Illicit Drugs**

Substance abuse and drug dependency are problems of staggering proportions in our society today. They are the leading causes of preventable illness, disability, and death in the United States. Alcohol/chemical dependency is a disease that affects not only individuals, but every component of the family system, workplace, and the community. Chemical abuse not only includes alcohol and illegal drugs, but also prescription drugs such as tranquilizers, pain killers, sleeping pills, etc.

## **A. Alcohol/Drug Abuse**

Alcoholism and other drug dependencies are diseases with identifiable symptoms. These symptoms include changes in alcohol/drug tolerance, blackouts (permanent, chemically induced memory loss), denial (refusal to admit that chemical use is a problem), mood swings, behavior changes, and loss of control (inability to stop and/or limit chemical consumption). The disease injures the person economically, socially, physically, psychologically, and spiritually; relationships break down, work performance is impaired, depression often occurs and behavior often goes against values. Persons who suffer from chemical dependency are victims of a progressive, fatal disease. Alcoholism/addiction affects people of all ages, economic levels, and races.

Alcoholism is a disorder that has profound psychological and biological patterns: (1) regular daily intoxication, (2) drinking large amounts of alcohol at specific times, and (3) periods of sobriety interspersed with periods of heavy daily drinking. The course of the disorder is usually progressive and physical dependence can develop. If this happens, serious symptoms, sometimes life threatening, can develop when alcohol is withdrawn. Short-term effects of alcohol use can include depression, gastritis, liver disease and automobile accidents, and domestic violence. Chronic alcohol abuse can produce irreversible changes, including dementia, sexual impotence, cirrhosis of the liver, and heart disease. Death can occur either as a complication of one of these chronic problems, or acutely, secondary to alcohol intoxication by poisoning or aspiration of vomitus or as the result of an automobile accident while driving intoxicated.

## **B. Impact on Families and Friends**

Families are gravely affected by a chemical abusing member. Some of the effects on the family include: feelings of insecurity, guilt, fear, isolation, anger, and resentment. As the chemically dependent person's disease progresses, the effects on the family worsen. As a very direct, physiological consequence, the infants of alcohol and cocaine abusing mothers often have low birth weight and may suffer from malformations and a variety of developmental problems. Children are often the most vulnerable to the effects of chemical dependency. Growing up in families where their developmental needs are not met, children may face a variety of problems; low self-esteem, inability to trust others, teenage pregnancy, and high risks for chemical use/abuse/dependency.

The lifestyle of the abuser often affects the economic well-being of their families due to their inability to hold down a job. In some cases, the abuser will steal from relatives, which reduces the family's financial means and stability. In many cases, substance abuse leads to violence at home.

There is an obvious emotional toll of substance abuse on the functioning of individual members and the family as a whole. Family members may actively deny the problem, may become symptomatic in an effort to deflect attention from the substance abusing member, or may assume the abuser's responsibilities at home and even at work.

Chemical dependency is treatable. With an understanding of the disease and its impact on lives, family members and friends can take steps to help reduce enabling behaviors. Very often, the family's intervention with the user and his or her problem is an essential step which encourages

the abusing member to seek treatment. Support groups for family members, such as Al-Anon, as well as family therapy can provide needed assistance to families as they grapple with the destructive effects of the user's addiction

### **C. Support and Treatment Centers**

#### **WVU Morgantown Campus**

1. WVU Carruth Center for Psychological and Psychiatric Services: (304) 293-4431
2. Student Assistance Program (SAP)/Substance Abuse: (304) 293-4431
3. WVU Faculty and Staff Assistance Program (FSAP): (304) 293-5590

#### **Potomac State College of WVU**

1. WVU Carruth Center for Psychological and Psychiatric Services: (304) 293-4431
2. WVU Faculty and Staff Assistance Program (FSAP): (304) 293-5590
3. PSC Center for Counseling and Psychological Services: (304) 788-6976
4. PSC Student Health Center: (304) 788-6913
5. Alcohol and Other Drug (AOD) Prevention Office: (304) 788-6910

#### **WVU RCB HSC Charleston Division**

1. WVU Behavioral Medicine and Psychology Department: (304) 341-1500

#### **WVU Institute of Technology**

1. FMRS Health Systems, Inc. (Beckley): (304) 256-7100
2. Brian's Safehouse (Mount Hope): (304) 763-7655
3. Pyramid Counseling LLC (Beckley): (304) 256-0200
4. Appalachian Regional Healthcare (Beckley): (304) 255-300
5. FMRS Health Systems, Inc. (Fayetteville): (304) 574-2100
6. Charleston Treatment Center (Charleston): (304) 344-5924
7. Rea of Hope Fellowship Home (Charleston): (304) 344-5363
8. Thomas Behavioral Health (Charleston): (304) 766-3553

This list of treatment facilities and services is not intended to be exhaustive; it is merely a helpful list of some contacts in areas convenient to West Virginia University campuses. West Virginia University is not affiliated with and does not accept liability for any services, treatment, or counseling provided by these third-parties or their employees for any acts of misfeasance, nonfeasance, or malfeasance by same. The individual and his or her family should conduct reviews of these facilities before accepting their services.

### **IV. State and Federal Drug Laws and Penalties**

Federal law penalizes the knowing and intentional manufacture, distribution, dispensation, or possession with intent to manufacture, distribute, or dispense a controlled substance or a counterfeit substance. 21 U.S.C. § 841(a)(1)-(2). Listed below are the offenses and penalties for violation of the Controlled Substances Act.

## **A. 21 U.S.C. § 841(b) – Penalties**

**Any person who manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute, or dispense the following controlled substances in the amounts listed:**

- 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;
- 5 kilograms or more of a mixture or substance containing a detectable amount of, (i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; (ii) cocaine, its salts, optical and geometric isomers, (iii) and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or (iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in parts (i) through (iii) listed above.
- 280 grams or more of a mixture or substance described previously which contains cocaine base;
- 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);
- 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);
- 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidiny] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidiny] propanamide;
- 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or
- 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

**Shall be penalized as detailed below:**

- Sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in

accordance with the provisions of title 18, United States Code, or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both.

- If any person commits such a violation after a prior conviction for serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both.
- If any person commits a violation of this subparagraph or of [21 U.S.C. §§ 849, 859, 860, or 861] after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence.

**Any person who manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute, or dispense the following controlled substances in the amounts listed:**

- 100 grams or more of a mixture or substance containing a detectable amount of heroin;
- 500 grams or more of a mixture or substance containing a detectable amount of coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;
- 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);
- 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);
- 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide;
- 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

- 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

**Shall be penalized as detailed below:**

- Sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both.
- If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both.

**For further explanation and more specific offenses and penalties, see 21 U.S.C. § 841, available at <http://www.law.cornell.edu/uscode/text/21/841>.**

**B. 21 U.S.C. § 844(a) – Penalty for Simple Possession**

**21 U.S.C. § 844(a) imposes penalties for the simple possession of controlled substances and provides as follows:**

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 title or title III. 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 [21 U.S.C. § 823] or [21 U.S.C. § 958] 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. It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or the Postal Service. 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 a

prior conviction under this title or title III, 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 title or title III, 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 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, United States Code, 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.

**For further explanation and definitions of “drug, narcotic, or chemical offense” see 21 U.S.C. § 844, available at: <https://www.law.cornell.edu/uscode/text/21/844>.**

### **C. State of West Virginia Laws Regarding the Unlawful Possession, Use, or Distribution of Illicit Drugs and Alcohol**

#### **i. Alcohol Violations and Penalties related to Underage Persons:**

- Any person under the age of twenty-one years, who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$500 or shall be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not to exceed one year. W. Va. Code § 11-16-19(a)(1).
- Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, misrepresents his or her age or offers any written evidence of age which is false, fraudulent or not actually his or her own or who illegally attempts to purchase nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$100 or shall be confined in jail, or in the case of a juvenile, a juvenile detention facility, for a period not to exceed seventy-two hours, or both such fine and confinement or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not exceeding one year. W. Va. Code § 11-16-19(b).
- Any person who shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one to whom they are not related by blood or marriage is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$100

or shall be confined in jail for a period not to exceed ten days, or both such fine and confinement. W. Va. Code § 11-16-19(c).

## **ii. Alcohol in Public Places:**

- A person shall not appear in a public place in an intoxicated condition; drink alcoholic liquor in a public place; tender a drink of alcoholic liquor to another person in a public place; 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 possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter. W. Va. Code § 60-6-9(a)(1-5).
- A person who engages in the above-listed behavior 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 \$5 nor more than one \$100. 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 \$5 nor more than \$100 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 \$5 nor more than \$100 and not less than five nor more than sixty days in jail or a fine of not less than \$5 nor more than \$100 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. 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. W. Va. Code § 60-6-9(e)(1)-(3).

## **iii. Controlled Substances Violations**

- Except as authorized by law, it is unlawful for any person to manufacture, deliver, or possess with intent to deliver controlled substances (see below for references to controlled substances). West Virginia Code Sections 60A-2-204, 206, 208, 210, and 212 list Schedule I, II, III, IV, and V Controlled Substances as referred to hereafter. With regard to offenses involving these Schedules of Controlled Substances, the Uniform Controlled Substances Act is available at the following website:

<http://www.wvlegislature.gov/WVCODE/code.cfm?chap=60A&art=1>

- It is an unlawful offense for any person to deliver, manufacture, create, or possess with intent to manufacture or deliver any controlled substance as defined in the Schedules of Controlled Substances. Such offenses relate to controlled substances, counterfeit substances or imitation controlled substances. Violations and penalties are defined below:

**A person who violates the West Virginia State Code with respect to:**

- Any controlled substance or 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 state correctional facility for not less than one year nor more than fifteen years, or fined not more than \$25,000, or both. W. Va. Code § 60A-4-401 *et seq.*
- Any other controlled substance or counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both. W. Va. Code § 60A-4-401 *et seq.*
- A controlled substance or counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both. W. Va. Code § 60A-4-401 *et seq.*
- A controlled substance or counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, 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: Provided, that for offenses relating to any substance classified as Schedule V in Article ten [W. Va. Code §§ 60A-10-1 *et seq.*] of this Chapter, the penalties established in said article apply. W. Va. Code § 60A-4-401 *et seq.*
- 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 the Uniform Controlled Substances Act is guilty of a misdemeanor and may be confined in jail not less than ninety days nor more than six months, or fined not more than \$1,000, or both. W. Va. Code § 60A-4-401(c).
- An imitation controlled substance is guilty of a misdemeanor and, upon conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both. Any person being eighteen years old or more who violates this law 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 state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both. W. Va. Code § 60A-4-401(d).

## D. Vehicular Offenses

- Any person who drives a vehicle in this State while he or she is in an impaired state and such impaired state proximately causes the death of any person 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 fifteen years and shall be fined not less than \$1,000 nor more than \$3,000: Provided, that any death charged under this subsection must occur within one year of the offense. W. Va. Code § 17C-5-2(b).
- Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes serious bodily injury to any person other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and shall be fined not less than \$1,000 nor more than \$3,000. W. Va. Code § 17C-5-2(c).
- Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$100. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than \$100 nor more than \$500. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in Section three-a [W. Va. Code § 17C-5A-3a], Article five-a of this Chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence. W. Va. Code § 17C-5-2(j).

For the full text of the West Virginia Code related to driving under the influence, see <http://www.legis.state.wv.us/wvcode/Code.cfm?chap=17c&art=5>