

**Senate Bill No. 323**

(By Senators Klempa, Yost, Edgell, Kessler (Acting President),  
Jenkins and Nohe)

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[Introduced January 27, 2011; referred to the Committee on  
Education; and then to the Committee on the Judiciary.]  
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11 A BILL to amend and reenact §60A-4-406 of the Code of West  
12 Virginia, 1931, as amended, relating to increasing the period  
13 of ineligibility for parole for people convicted of the felony  
14 offense of distribution of a controlled substance in the  
15 proximity of students awaiting, boarding or exiting a school  
16 bus.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §60A-4-406 of the Code of West Virginia, 1931, as  
19 amended, be amended and reenacted to read as follows:

20 **ARTICLE 4. OFFENSES AND PENALTIES.**

21 **§60A-4-406. Distribution to persons under the age of eighteen by**  
22 **persons over the age of twenty-one; distribution by**  
23 **persons eighteen or over in or within one thousand**  
24 **feet of school or college or within one hundred**  
25 **feet of students awaiting, boarding or exiting a**  
26 **school bus; increasing mandatory period of**

1                   **incarceration prior to parole eligibility.**

2           (a) Notwithstanding any other provision of law to the  
3 contrary, a person is ineligible for parole for a period of three  
4 years if he or she is sentenced to the custody of the commissioner  
5 of corrections for service of a sentence of incarceration and is  
6 convicted of a felony violation under the provisions of subdivision  
7 (i), subsection (a), section four hundred one of this article for  
8 distribution of a controlled substance and:

9           (1) Is twenty-one years of age or older at the time of the  
10 distribution upon which the conviction is based and the person to  
11 whom the controlled substance was distributed was under the age of  
12 eighteen years at the time of the distribution; or

13           (2) Is eighteen years of age or older and the distribution  
14 upon which the conviction is based occurred in or on or within one  
15 thousand feet of the real property comprising a public or private  
16 elementary, vocational or secondary school or a public or private  
17 college, junior college or university in this state or within the  
18 first one hundred feet within the view of students awaiting,  
19 boarding or exiting a school bus, excluding the interior of all  
20 buildings except school bus stop shelters. For purposes of this  
21 subsection, "school bus" means a commercial motor vehicle used to  
22 transport preprimary, primary or secondary school students from  
23 home-to-school, from school-to-home or to and from school sponsored  
24 events. School bus does not include a bus used as a common  
25 carrier.

26           (b) Notwithstanding any other provision of law to the

1 contrary, a person is ineligible for parole for a period of two  
2 years if he or she is sentenced to the custody of the commissioner  
3 of corrections for service of a sentence of incarceration and is  
4 convicted of a felony violation under the provisions of subdivision  
5 (ii), subsection (a), section four hundred one of this article for  
6 distribution of a controlled substance and:

7 (1) Is twenty-one years of age or older at the time of the  
8 distribution upon which the conviction is based and the person to  
9 whom the controlled substance was distributed was under the age of  
10 eighteen years at the time of the distribution; or

11 (2) Is eighteen years of age or older and the distribution  
12 upon which the conviction is based occurred in or on or within one  
13 thousand feet of the real property comprising a public or private  
14 elementary, vocational or secondary school or a public or private  
15 college, junior college or university in this state or within the  
16 first one hundred feet within the view of students awaiting,  
17 boarding or exiting a school bus, excluding the interior of all  
18 buildings except school bus stop shelters. For purposes of this  
19 subsection, "school bus" means a commercial motor vehicle used to  
20 transport preprimary, primary or secondary school students from  
21 home-to-school, from school-to-home or to and from school sponsored  
22 events. School bus does not include a bus used as a common  
23 carrier.

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

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

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

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

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

9       (d) Nothing in this section ~~shall be construed to limit~~ limits  
10 the sentencing alternatives made available to circuit court judges  
11 under other provisions of this code.

NOTE: The purpose of this bill is to increase the period of ineligibility for parole for people convicted of the felony offense of distribution of a controlled substance in the proximity of students waiting, boarding or exiting a school bus.

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