

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4866

FISCAL  
NOTE

BY DELEGATES HOWELL AND PORTERFIELD

[Introduced February 11, 2020; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §60A-4-418, relating to conspiracy to commit violations of the Uniform  
 3 Controlled Substances Act; creating the felony offense of conspiracy; providing penalties;  
 4 establishing a sentencing guideline based upon quantity for certain controlled substances;  
 5 authorizing the court to make the determination of applicable quantity; and authorizing the  
 6 aggregation of quantities from all participants and members of the conspiracy.

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

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-418. Conspiracy.**

1 (a) Legislative findings. -- The Legislature finds and declares that the substance abuse  
 2 issues which plague the state are significant factors in the decline of the state's economic  
 3 conditions, a lack of growth in its population, the inability to attract new businesses, and a massive  
 4 drain on the resources of the state and its people. In order to be competitive in developing new  
 5 employment opportunities for the citizens of the state, maintain a drug-free workforce, improve  
 6 the mental and physical health of West Virginians, and create opportunities to keep its people  
 7 from leaving, the Legislature must make all efforts to fight back against the substance abuse  
 8 issues the state faces. Further, the Legislature also finds that a significant amount of the illegal  
 9 substances which are sold in the state are brought across state lines by individuals who do so on  
 10 the behalf of others in another state.

11 (b) Legislative intent. -- It is the intent of the Legislature in the enactment of this section to  
 12 help stem the flow of controlled substances into West Virginia from surrounding states. As a  
 13 consequence, it is the intent of the Legislature to increase the penalties for those who conspire  
 14 with another to distribute controlled substances, to provide law enforcement with a greater ability  
 15 to arrest those individuals who conspire to distribute controlled substances in this state but who  
 16 may seek safe harbor in another state, and finally to give the courts flexibility in their determination  
 17 of a defendant's sentence who is found to be in violation of this section.

18 (c) Any person who conspires with one or more other persons to commit an offense  
 19 enumerated in this chapter shall, if one or more of such persons does any act to effect the object  
 20 of the conspiracy, be deemed guilty of a felony and, upon conviction, shall be imprisoned in a  
 21 state correctional facility for not less than two nor more than 10 years: *Provided*, That if the offense  
 22 involves one of the substances and quantities specified in the guideline in subsection (d) of this  
 23 section, then the person shall be sentenced to the applicable penalty specified in the guideline in  
 24 that subsection.

25 (d) For those persons convicted under subsection (c) of this section for a controlled  
 26 substance specified in the guideline below, the person shall be imprisoned pursuant to the  
 27 specified penalty in the guideline based upon the applicable quantity:

<u><b>Substance</b></u>	<u><b>Quantity</b></u>	<u><b>Imprisonment</b></u>
		<u><b>(not less than/nor more than)</b></u>
<u>Heroin</u>		
	<u>1 kilogram or more</u>	<u>20 years/60 years</u>
	<u>100 to 999 grams</u>	<u>10 years /30 years</u>
	<u>Less than 100 grams</u>	<u>5 years/15 years</u>
<u>Cocaine/Cocaine base</u>		
	<u>5 kilograms or more</u>	<u>20 years/60 years</u>
	<u>500 to 4999 grams</u>	<u>10 years/30 years</u>
	<u>Less than 500 grams</u>	<u>5 years/15 years</u>
<u>PCP (phencyclidine)</u>		
	<u>100 grams or more</u>	<u>20 years/60 years</u>
	<u>10 to 99 grams</u>	<u>10 years/30 years</u>
	<u>Less than 10 grams</u>	<u>5 years/15 years</u>
<u>LSD (lysergic acid diethylamide)</u>		
	<u>10 grams or more</u>	<u>20 years/60 years</u>

44	<u>1 to 9 grams</u>	<u>10 years/30 years</u>
45	<u>Less than 1 gram</u>	<u>5 years/15 years</u>
46	<u>Methamphetamine</u>	
47	<u>50 grams or more (or 500 grams</u>	<u>20 years/60 years</u>
48	<u>or more of a mixture)</u>	
49	<u>5 to 49 grams (or 50 to 499</u>	<u>10 years/30 years</u>
50	<u>grams or more of a mixture)</u>	
51	<u>Less than 5 grams (or less than</u>	<u>5 years/15 years</u>
52	<u>50 grams of mixture)</u>	

53 For purposes of this guideline, 1 kilogram is equal to 35.27 ounces; 1 gram is equal to  
 54 0.04 ounces.

55 (e) As part of sentencing, the court shall make the determination as to the applicable  
 56 quantity based upon information before the court or that may be made known to the court through  
 57 plea agreement, proffer, stipulation, presentence investigation, or evidence adduced at trial. If  
 58 necessary, the court may require presentation of evidence by the state to determine the applicable  
 59 quantity as part of sentencing under the guideline. The court's determination as to the applicable  
 60 quantity may be based upon reasonable estimates derived and calculable from information or  
 61 evidence before the court.

62 (f) For purposes of sentencing under this section, the determination as to the applicable  
 63 quantity of controlled substances may include any quantity or type of controlled substance  
 64 involved in the conspiracy including, but not be limited to, controlled substances manufactured,  
 65 distributed, delivered, possessed, or obtained by other participants or members of the conspiracy.

66 (g) Nothing in this section shall be interpreted by the courts as placing any limitations  
 67 whatsoever upon alternative sentencing options which may be available to the courts in  
 68 determining the sentence of a defendant found guilty of violating this section. These options shall

69 include, but shall not be limited to, home confinement pursuant to §62-11B-1 *et seq.* of this code,  
70 or probation pursuant to §62-12-1 *et seq.* of this code

71 (h) Any defendant charged in violation of this section may not also be charged with the  
72 general conspiracy offense provided within §61-10-31 of this code: *Provided*, That a defendant  
73 may be charged under the general conspiracy offense in addition to this offense provided that the  
74 conspiracy is not related to any offenses under §60A-4-1 *et seq.* of this code.

NOTE: The purpose of this bill is to create a criminal offense to hold all participants involved in a conspiracy to violate the drug laws responsible. The bill establishes sentences based upon quantities for certain controlled substances, and allows all substances possessed or delivered among the members of the conspiracy to be attributed to a defendant.

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