

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 405

BY SENATORS TRUMP, LEONHARDT, MILLER,
CARMICHAEL, WOELFEL, BOSO, GAUNCH, ASHLEY,
PLYMALE AND BLAIR

[Introduced January 27, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §60A-4-414, relating to conspiracy to commit violations of Uniform Controlled
 3 Substances Act; creating felony offense of conspiracy; providing penalties; establishing
 4 sentencing guideline based upon quantity for certain controlled substances; authorizing
 5 court to make determination of applicable quantity; and authorizing aggregation of
 6 quantities from all participants and members of the conspiracy.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §60A-4-414, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-414. Conspiracy.

1 (a) Any person who conspires with one or more other persons to commit an offense
 2 enumerated in this chapter shall, if one or more of such persons does any act to effect the object
 3 of the conspiracy, be deemed guilty of a felony and, upon conviction thereof, shall be imprisoned
 4 in a state correctional facility for not less than two nor more than ten years: *Provided*, That if the
 5 offense involves one of the substances and quantities specified in the guideline in subsection (b)
 6 of this section, then the person shall be sentenced to the applicable penalty specified in the
 7 guideline in subsection (b).

8 (b) For those persons convicted under subsection (a) of this section for a controlled
 9 substance specified in the guideline below, the person shall be imprisoned pursuant to the
 10 specified penalty in the guideline based upon the applicable quantity:

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<u>Substance</u>	<u>Quantity</u>	<u>Imprisonment</u>
		<u>(not less than/nor more than)</u>
<u>Heroin</u>	<u>1 kilogram or more</u>	<u>20 years/60 years</u>

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16	<u>100 to 999 grams</u>	<u>10 years /30 years</u>
17	<u>Less than 100 grams</u>	<u>5 years/15 years</u>
18	<u>Cocaine/Cocaine base</u>	
19	<u>5 kilograms or more</u>	<u>20 years/60 years</u>
20	<u>500 to 4999 grams</u>	<u>10 years/30 years</u>
21	<u>Less than 500 grams</u>	<u>5 years/15 years</u>
22	<u>PCP (phencyclidine)</u>	
23	<u>100 grams or more</u>	<u>20 years/60 years</u>
24	<u>10 to 99 grams</u>	<u>10 years/30 years</u>
25	<u>Less than 10 grams</u>	<u>5 years/15 years</u>
26	<u>LSD (lysergic acid diethylamide)</u>	
27	<u>10 grams or more</u>	<u>20 years/60 years</u>
28	<u>1 to 9 grams</u>	<u>10 years/30 years</u>
29	<u>Less than 1 gram</u>	<u>5 years/15 years</u>
30	<u>Methamphetamine</u>	
31	<u>50 grams or more (or 500 grams</u>	<u>20 years/60 years</u>
32	<u>or more of a mixture)</u>	
33	<u>5 to 49 grams (or 50 to 499</u>	<u>10 years/30 years</u>
34	<u>grams or more of a mixture)</u>	
35	<u>Less than 5 grams (or less than</u>	<u>5 years/15 years</u>
36	<u>50 grams of mixture)</u>	
37	<u>Marijuana</u>	
38	<u>1000 kilograms or more</u>	<u>20 years/60 years</u>
39	<u>100 to 999 kilograms</u>	<u>10 years/30 years</u>
40	<u>50 to 99 kilograms</u>	<u>5 years/15 years</u>
41	<u>Less than 50 kilograms</u>	<u>2 years/10 years</u>

42 For purposes of this guideline, 1 kilogram is equal to 35.27 ounces; 1 gram is equal to
43 0.04 ounces.

44 (c) As part of sentencing, the court shall make the determination as to the applicable
45 quantity based upon information before the court or that may be made known to the court through
46 plea agreement, proffer, stipulation, presentence investigation, or evidence adduced at trial. If
47 necessary, the court may require presentation of evidence by the state to determine the applicable
48 quantity as part of sentencing under the guideline. The court's determination as to the applicable
49 quantity may be based upon reasonable estimates derived and calculable from information or
50 evidence before the court.

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

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. This bill was recommended for introduction by the Joint Committee on the Judiciary that met during the 2015-2016 Interim session.

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