

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 219

BY SENATOR WELD

[Originating in the Committee on the Judiciary;

reported on March 10, 2017]

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 generally to conspiracy to commit violations of the
3 Uniform Controlled Substances Act; creating the felony offense of conspiracy to violate
4 controlled substances law; creating distinct felony offenses of conspiracy to manufacture,
5 deliver, or possess with intent to manufacture or deliver heroin, cocaine or cocaine base,
6 phencyclidine, lysergic acid diethylamide and methamphetamine distinguished by the
7 weight of the controlled substance; and providing criminal penalties.

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 willfully conspires with one or more persons to commit a felony
2 violation of section four hundred one of this article, if one or more of such persons does any act
3 to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be
4 imprisoned in a state correctional facility for a determinate sentence of not less than two nor more
5 than ten years: *Provided*, That the provisions of this subsection are inapplicable to felony
6 violations of section four hundred one of this article prohibiting the manufacture, delivery or
7 possession with intent to manufacture or deliver marijuana.

8 (b) Notwithstanding the provisions of subsection (a) of this section, any person who
9 willfully conspires with one or more persons to manufacture, deliver or possess with intent to
10 manufacture or deliver one kilogram or more of heroin, five kilograms or more of cocaine or
11 cocaine base, one hundred grams or more of phencyclidine, ten grams or more of lysergic acid
12 diethylamide, or fifty grams or more of methamphetamine or five hundred grams of a substance
13 or material containing a measurable amount of methamphetamine, if one or more of such persons
14 does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction

15 thereof, shall be imprisoned in a state correctional facility for a determinate sentence of thirty
16 years.

17 (c) Notwithstanding the provisions of subsection (a) of this section, any person who willfully
18 conspires with one or more persons to manufacture, deliver or possess with intent to manufacture
19 or deliver not less than one hundred but fewer than one thousand grams of heroin, not less than
20 five hundred but fewer than five thousand grams of cocaine or cocaine base, not less than ten
21 but fewer than ninety-nine grams of phencyclidine, not less than one but fewer than ten grams of
22 lysergic acid diethylamide, or at least five but fewer than fifty grams of methamphetamine or less
23 than five hundred grams of a substance or material containing a measurable amount of
24 methamphetamine, if one or more of such persons does any act to effect the object of the
25 conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
26 correctional facility for a determinate sentence of twenty years.

27 (d) Notwithstanding the provisions of subsection (a) of this section, any person who
28 willfully conspires with one or more persons to manufacture, deliver, possess with intent to
29 manufacture or deliver one hundred grams or fewer of heroin, five hundred grams or fewer of
30 cocaine or cocaine base, ten grams of phencyclidine or fewer, one gram of lysergic acid
31 diethylamide or fewer, or five grams of methamphetamine or fifty grams of a substance or material
32 containing a measurable amount of methamphetamine fewer, if one or more of such persons
33 does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction
34 thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less
35 than ten nor more than fifteen years.

36 (e) The trier of fact shall determine the quantity of the controlled substance attributable to
37 the defendant beyond a reasonable doubt based on evidence adduced at trial.

38 (f) The determination of the trier of fact as to the quantity of controlled substance
39 attributable to the defendant in a charge under this section may include all of the controlled
40 substances manufactured, delivered or possessed with intent to deliver or manufacture by other

41 participants or members of the conspiracy.

42 (g) Offenses in this section proscribing conduct involving lesser quantities are lesser
43 included offenses of offenses proscribing conduct involving larger quantities.

44 (h) No person may be charged under the provisions of section thirty-one, article ten,
45 chapter sixty-one of this code for conduct that is charged under this section.

46 (i) Nothing in this section may be construed to place any limitation whatsoever upon
47 alternative sentencing options available to a court.