

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### House Bill 2920

FISCAL  
NOTE

BY DELEGATES MARCUM, HICKS, WESTFALL,

RODIGHERO, ELDRIDGE AND THOMPSON

[Introduced March 10, 2017; 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-4-406a; and to amend and reenact §60A-4-409 of said code, all relating  
 3 to the Uniform Controlled Substances Act; offenses and penalties; providing mandatory  
 4 minimum sentences for trafficking drugs into the state and for other drug offenses;  
 5 increasing period of ineligibility for parole for certain violations of possession or distribution  
 6 of controlled substances and establishing applicable conditions; increasing period of  
 7 ineligibility for parole for transporting certain controlled substances into the state and  
 8 establishing applicable conditions; prohibiting application of alternative sentences; and  
 9 increasing the penalties for transporting controlled substances into the state.

*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-4-406a; and that §60A-4-409 of said code be amended and reenacted,  
 3 all to read as follows:

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-406a. Mandatory minimum sentences for violations.**

1 (a) Notwithstanding any other provision of law to the contrary, a person is ineligible for  
 2 parole for a period of ten years if that person is imprisoned in a state correctional facility for service  
 3 of a sentence of incarceration and is convicted of a felony violation under the provisions of  
 4 subdivision (i), subsection (a), section four hundred one of this article for distribution of a controlled  
 5 substance and:

6 (1) Is in possession at the time of arrest of controlled substances classified in Schedule I  
 7 or II, which is a narcotic drug, that has a street value of greater than \$1,000; and

8 (2) Has previously been convicted of a second or subsequent offense under this chapter  
 9 or under any statute of the United States or of any state relating to narcotic drugs.

10 (b) Notwithstanding any other provision of law to the contrary, a person is ineligible for  
 11 parole for a period of five years if that person is imprisoned in a state correctional facility for

12 service of a sentence of incarceration and is convicted of a felony violation under the provisions  
13 of subdivision (ii), subsection (a), section four hundred one of this article for distribution of a  
14 controlled substance and:

15 (1) Is in possession at time of arrest of controlled substances classified in Schedule I, II or  
16 III, that has a street value of greater than \$1,000; and

17 (2) Has previously been convicted of a second or subsequent offense under this chapter  
18 or under any statute of the United States or of any state relating to marihuana, depressant,  
19 stimulant, or hallucinogenic drugs.

20 (c) Notwithstanding any other provision of law to the contrary, a person is ineligible for  
21 parole for a period of fifteen years if that person is imprisoned in a state correctional facility for  
22 service of a sentence of incarceration and is convicted of a felony violation under the provisions  
23 of subdivision (1), subsection (b), section four hundred nine of this article for distribution of a  
24 controlled substance and:

25 (1) Is in possession at time of arrest of controlled substances classified in Schedule I or II  
26 which is a narcotic drug, that has a street value of greater than \$1,000; and

27 (2) Has previously been convicted of a second or subsequent offense under this chapter  
28 or under any statute of the United States or of any state relating to narcotic drugs.

29 (d) Notwithstanding any other provision of law to the contrary, a person is ineligible for  
30 parole for a period of ten years if that person is imprisoned in a state correctional facility for service  
31 of a sentence of incarceration and is convicted of a felony violation under the provisions of  
32 subdivision (2), subsection (b), section four hundred nine of this article for distribution of a  
33 controlled substance and:

34 (1) Is in possession at time of arrest of controlled substances classified in Schedule I, II or  
35 III, that has a street value of greater than \$1,000; and

36 (2) Has previously been convicted of a second or subsequent offense under this chapter  
37 or under any statute of the United States or of any state relating to marihuana, depressant,

38 stimulant, or hallucinogenic drugs.

39 (e) Those individuals subject to this section are not eligible for sentencing alternatives  
40 made available to circuit court judges under other provisions of this code.

**§60A-4-409. Prohibited acts -- Transportation of controlled substances into state;  
penalties.**

1 (a) Except as otherwise authorized by the provisions of this code, it ~~shall be~~ is unlawful for  
2 any person to transport into this state a controlled substance with the intent to deliver ~~the same a~~  
3 controlled substance or with the intent to manufacture a controlled substance.

4 (b) Any person who violates this section with respect to:

5 (1) A controlled substance classified in Schedule I or II, which is a narcotic drug, ~~shall be~~  
6 is guilty of a felony and, upon conviction, may be imprisoned in ~~the a~~ a state correctional facility for  
7 not less than ~~one ten~~ ten years nor more than ~~fifteen~~ thirty years, or fined not more than \$25,000, or  
8 both fined and imprisoned;

9 (2) Any other controlled substance classified in Schedule I, II or III ~~shall be~~ is guilty of a  
10 felony and, upon conviction, ~~may shall~~ shall be imprisoned in ~~the a~~ a state correctional facility for not less  
11 than one year nor more than ~~five~~ fifteen years, or fined not more than \$15,000, or both fined and  
12 imprisoned;

13 (3) A substance classified in Schedule IV ~~shall be~~ is guilty of a felony and, upon conviction,  
14 may be imprisoned in the state correctional facility for not less than one year nor more than three  
15 years, or fined not more than \$10,000, or both fined and imprisoned;

16 (4) A substance classified in Schedule V ~~shall be~~ is guilty of a misdemeanor and, upon  
17 conviction, ~~may shall~~ shall be confined in jail for not less than six months nor more than one year, or  
18 fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any  
19 substance classified as Schedule V in article ten of this chapter, the penalties established in ~~said~~  
20 that article apply.

21 (c) The offense established by this section shall be in addition to and a separate and

22 distinct offense from any other offense set forth in this code.

NOTE: The purpose of this bill is to increase the penalties and mandatory minimum sentences for drug traffickers bringing drugs into the state and for distributing drugs. The enhanced penalties apply to those individuals previously been convicted of a drug offense and who are in possession of a certain threshold of drugs at the time of the arrest.

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