

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4544

BY DELEGATES WAXMAN, STEELE, PHILLIPS, MILEY,
QUEEN, HAMRICK, FOSTER, BIBBY, KUMP, N. BROWN AND

FAST

[Introduced January 27, 2020; Referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §60A-4-406 of the Code of West Virginia, 1931, as amended,
2 applying a mandatory period of incarceration prior to parole eligibility for persons 18 years
3 old or over who are convicted of distributing a controlled substance within 200 feet of a
4 public library.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

**§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21;
distribution by persons 18 or over in or on, or within 1,000 feet of a school or
college; distribution by persons 18 or over in or on, or within 200 feet of a public
library; increasing mandatory period of incarceration prior to parole eligibility.**

1 (a) Notwithstanding any other provision of law to the contrary, a person is ineligible for
2 parole for a period of three years if he or she is sentenced to the custody of the Commissioner of
3 Corrections and Rehabilitation, or his or her predecessor, for service of a sentence of
4 incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(i) of this
5 code for distribution of a controlled substance and:

6 (1) Is 21 years of age or older at the time of the distribution upon which the conviction is
7 based, and the person to whom the controlled substance was distributed was under the age of
8 18 years at the time of the distribution; or

9 (2) Is 18 years of age or older and the distribution upon which the conviction is based
10 occurred in or on, or within 1,000 feet of, the real property comprising a public or private
11 elementary, vocational or secondary school or a public or private college, junior college or
12 university in this state; or

13 (3) Is 18 years of age or older and the distribution upon which the conviction is based
14 occurred in or on, or within 200 feet of, the real property comprising a public library in this state.

15 (b) Notwithstanding any other provision of law to the contrary, a person is ineligible for
16 parole for a period of two years if he or she is sentenced to the custody of the Commissioner of

17 Corrections and Rehabilitation, or his or her predecessor, for service of a sentence of
18 incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(ii) of
19 this code for distribution of a controlled substance and:

20 (1) Is 21 years of age or older at the time of the distribution upon which the conviction is
21 based, and the person to whom the controlled substance was distributed was under the age of
22 18 years at the time of the distribution; or

23 (2) Is 18 years of age or older and the distribution upon which the conviction is based
24 occurred in or on, or within 1,000 feet of, the real property comprising a public or private
25 elementary, vocational or secondary school or a public or private college, junior college or
26 university in this state; or

27 (3) Is 18 years of age or older and the distribution upon which the conviction is based
28 occurred in or on, or within 200 feet of, the real property comprising a public library in this state.

29 (c) The existence of any fact which would make any person subject to the provisions of
30 this section may not be considered unless the fact is clearly stated and included in the indictment
31 or presentment by which the person is charged and is either:

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

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

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

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

NOTE: The purpose of this bill is to make the provisions of the current law applicable to persons 18 years of age or older who are convicted of distribution of a controlled substance within 200 feet of public library in this state.

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