

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 259

SENATOR ROMANO, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 21, 2020]

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

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, on, or within 1,000 feet of, school or college;
distribution by persons 18 or over in, 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 for service of a sentence of incarceration and is convicted of a
4 felony violation under the provisions of §60A-4-401(a)(i) of this code for distribution of a controlled
5 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, on, or within 1,000 feet of, the real property comprising a public or private elementary,
11 vocational, or secondary school or a public or private college, junior college, or university in this
12 state; or

13 (3) Is 18 years of age or older and the distribution upon which the conviction is based
14 occurred in, 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 for service of a sentence of incarceration and is convicted of a
18 felony violation under the provisions of §60A-4-401(a)(ii) of this code for distribution of a controlled
19 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, on, or within 1,000 feet of, the real property comprising a public or private elementary,
25 vocational, or secondary school or a public or private college, junior college, or university in this
26 state; or

27 (3) Is 18 years of age or older and the distribution upon which the conviction is based
28 occurred in, 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.