

# WEST VIRGINIA CODE: §60A-4-414

## §60A-4-414. Conspiracy.

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

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

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

(d) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver, possess with intent to manufacture or deliver not less than ten grams nor more than one hundred grams of heroin, not less than fifty grams nor more than five hundred grams of cocaine or cocaine base, not less than two grams nor more than ten grams of phencyclidine, not less than two hundred micrograms nor more than one gram of lysergic acid diethylamide, or not less than four hundred ninety-nine milligrams nor more than five grams of methamphetamine or not less than twenty grams nor more than fifty grams of a substance or material containing a measurable amount of methamphetamine, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be

imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than fifteen years.

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

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

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

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

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