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 §60A-4-401 of this code, 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 10 years: *Provided,* That the provisions of this subsection are inapplicable to felony violations of §60A-4-401 of this code 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, one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine, or five grams or more of fentanyl, 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 an indeterminate sentence of not less than five years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(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 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl, 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 an indeterminate sentence of not less than three years nor more than 20 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 10 grams nor more than 100 grams of heroin, not less than 10 grams nor more than 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less one gram nor more than five grams of methamphetamine, or less than one gram of fentanyl, 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 an indeterminate sentence of

WV Legislature

not less than two years nor more than 15 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) For purposes of determining the weight of any controlled substance under this section, a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty.

(h) Under this section, where the conspiracy involves two or more controlled substances, each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together.

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

(j) A person may be charged under the provisions of §61-10-31 of this code for conduct that is charged under this section.

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