

No. 2089

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

Com. Sub. for
HOUSE BILL No. 2089

(By ~~##~~ Del Manuel + Murphy)



Passed March 20, 1989

In Effect Ninety Days From Passage

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2089

(By DELEGATES MANUEL AND MURPHY)

[Passed March 20, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances to persons under the age of eighteen by persons over the age of twenty-one and increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances by persons eighteen or older in or on, or within one thousand feet of, the real property comprising an educational facility.

Be it enacted by the Legislature of West Virginia:

That section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thou-

**sand feet of, school or college; increasing
mandatory period of incarceration prior
to parole eligibility.**

1 (a) Notwithstanding any provision of this code, a
2 person convicted of a felony violation of the provisions
3 of section four hundred one of this article for distribu-
4 tion of a controlled substance who:

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

10 (2) Is eighteen years of age or older and the distribu-
11 tion upon which the conviction is based occurred in or
12 on, or within one thousand feet of, the real property
13 comprising a public or private elementary, vocational or
14 secondary school or a public or private college, junior
15 college or university in this state, shall, if sentenced to
16 the custody of the commissioner of corrections for
17 service of a sentence of incarceration, be ineligible for
18 parole for a period of two years.

19 (b) The existence of any fact which would make any
20 person subject to the provisions of this section shall not
21 be considered unless such fact is clearly stated and
22 included in the indictment or presentment by which
23 such person is charged and is either:

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

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

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

31 (c) Nothing in this section shall be construed to limit
32 the sentencing alternatives made available to circuit
33 court judges under other provisions of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Joseph C. Wicks
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Samuel J. ...
President of the Senate

...
Speaker of the House of Delegates

The within *is approved* this the *25th*
day of *March*, 1989.

Marion Cape L
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27

Time 10:26