WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2089...

(By Mr. Del. Manuel Murphy)

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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.

(a) Notwithstanding any provision of this code, a person convicted of a felony violation of the provisions of section four hundred one of this article for distribution of a controlled substance who:

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

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

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

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

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

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

(c) Nothing in this section shall be construed to limit the sentencing alternatives made available to circuit 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. Kelley  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Josef C. Walls  
Clerk of the Senate

Donald L. Hay  
Clerk of the House of Delegates

Larry T. Frolich  
President of the Senate

Harold A. Dean  
Speaker of the House of Delegates

The within bill is approved this the 27th day of March, 1989.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/27

Time 10:36