WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2000

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4340

(By Delegate Sparks)

Passed March 11, 2000

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 the length of incarceration for persons convicted of selling drugs to minors by making them ineligible for parole for a longer period of time than under current law.

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

(a) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of three years if he or she is sentenced to the custody of the commissioner of corrections for service of a sentence of incarceration and is convicted of a felony violation under the provisions of subdivision (i), subsection (a) section four hundred one of this article for distribution of a controlled substance and:

(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.

(b) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of two years if he or she is sentenced to the custody of the commissioner of corrections for service of a sentence of incarceration and is convicted of a felony violation under the provisions of subdivision (ii), subsection (a) section four hundred one of this article for distribution of a controlled substance and:

(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.

(c) The existence of any fact which would make any person subject to the provisions of this section may not be considered unless the fact is clearly stated and included in the indictment or presentment by which the 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.

(d) Nothing in this section shall be construed to limit the sentencing alternatives made available to circuit court judges under other provisions of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approval this the __________ day of ______________, 2000

Governor