

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

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**for**

**Senate Bill 219**

BY SENATOR WELD

[Originating in the Committee on Finance; reported on

March 17, 2017.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §60A-4-414, relating generally to conspiracy to commit violations of the  
3 Uniform Controlled Substances Act; creating the felony offense of conspiracy to violate  
4 controlled substances law; creating distinct felony offenses of conspiracy to manufacture,  
5 deliver or possess with intent to manufacture or deliver heroin, cocaine or cocaine base,  
6 phencyclidine, lysergic acid diethylamide and methamphetamine distinguished by the  
7 weight of the controlled substance; and providing criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 section, designated §60A-4-414, to read as follows:

#### **ARTICLE 4. OFFENSES AND PENALTIES.**

##### **§60A-4-414. Conspiracy.**

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

8 (b) Notwithstanding the provisions of subsection (a) of this section, any person who  
9 willfully conspires with one or more persons to manufacture, deliver or possess with intent to  
10 manufacture or deliver one kilogram or more of heroin, five kilograms or more of cocaine or  
11 cocaine base, one hundred grams or more of phencyclidine, ten grams or more of lysergic acid  
12 diethylamide, or fifty grams or more of methamphetamine or five hundred grams of a substance  
13 or material containing a measurable amount of methamphetamine, if one or more of such persons  
14 does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction

15 thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less  
16 than two nor more than thirty years.

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

28 (d) Notwithstanding the provisions of subsection (a) of this section, any person who  
29 willfully conspires with one or more persons to manufacture, deliver, possess with intent to  
30 manufacture or deliver not less than ten grams nor more than one hundred grams of heroin, not  
31 less than fifty grams nor more than five hundred grams of cocaine or cocaine base, not less than  
32 two grams nor more than ten grams of phencyclidine, not less than two hundred micrograms nor  
33 more than one gram of lysergic acid diethylamide, or not less than four hundred ninety-nine  
34 milligrams nor more than five grams of methamphetamine or not less than twenty grams nor more  
35 than fifty grams of a substance or material containing a measurable amount of methamphetamine,  
36 if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a  
37 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a  
38 determinate sentence of not less than two nor more than fifteen years.

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

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

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

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

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