

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2092**

BY DELEGATES OVERINGTON, FRICH, FOLK AND SOBONYA

[Introduced February 8, 2017; Referred

to the Committee on the Judiciary.]

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 to use of a firearm during, in relation to, or in furtherance  
3 of a violation of the Uniform Controlled Substances Act; creating the felony offense of use  
4 or possession of a firearm; providing penalties; clarifying that the offense is separate and  
5 distinct from other offenses; denying eligibility for sentencing alternatives; and clarifying  
6 the term "convicted".

*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. Use or possession of a firearm.**

3 (a) Any person who, during and in relation to any offense under this article, uses or carries  
4 a firearm, or who, in furtherance of the offense, possesses a firearm, is guilty of a felony and,  
5 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five  
6 years nor more than twenty years: Provided, That if the firearm is discharged, the person shall be  
7 imprisoned for not less than ten years nor more than forty years.

8 (b) The offense established by this section is in addition to, and a separate and distinct  
9 offense from, any other offense set forth in this code.

10 (c) Those individuals convicted under this section are not eligible for sentencing  
11 alternatives made available to circuit court judges under other provisions of this code. For  
12 purposes of this subsection, "convicted" includes adjudications found by a jury, by plea of guilty  
13 or nolo contendere or by the court if the person is tried without a jury.

NOTE: The purpose of this bill is to create an additional penalty for use of a firearm in furtherance of a drug offense. The bill additionally includes a heightened penalty if the firearm is discharged.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.