

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2648

**FISCAL
NOTE**

BY DELEGATES SYPOLT, ROWAN, WESTFALL, A. EVANS,
UPSON, C. MILLER, SOBONYA, STORCH, ROHRBACH AND
HOLLEN

[Introduced February 22, 2017; Referred
to the Committee on Prevention and Treatment of
Substance Abuse then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §60A-4-406a, relating to increased penalties for manufacturing or
 3 transportation of a controlled substance in the presence of a minor; providing for increased
 4 penalty for adult persons convicted of manufacturing, delivering, or possessing with the
 5 intent to manufacture or deliver a controlled substance in the presence of a minor; and
 6 providing for increased penalty for adult persons convicted of transporting a controlled
 7 substance into this state with the intent to deliver or manufacture a controlled substance
 8 while being in the presence of a minor at the time of the offense.

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-4-406a, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

**§60A-4-406a. Manufacture or delivery in presence of a minor; transportation into the state
 in presence of minor; mandatory period of incarceration prior to parole eligibility.**

3 (a) Notwithstanding any other provision of law to the contrary, a person is ineligible for
 4 parole for a period of three years if he or she is sentenced to the custody of the Commissioner of
 5 Corrections for service of a sentence of incarceration and is convicted of a felony violation under
 6 W.Va. Code §60A-4-401(a)(i) or (ii), and who caused a person under the age of eighteen to be
 7 present at the time and location of the offense upon which the conviction is based.

8 (b) Notwithstanding any other provision of law to the contrary, a person is ineligible for
 9 parole for a period of three years if he or she is sentenced to the custody of the Commissioner of
 10 Corrections for service of a sentence of incarceration and is convicted of a felony violation under
 11 W.Va. Code §60A-4-409(b)(1) or (2), and who caused a person under the age of eighteen to be
 12 present at the time and location of the offense upon which the conviction is based.

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

- 15 or presentment by which the person is charged and is either:
- 16 (1) Found by the court upon a plea of guilty or nolo contendere;
- 17 (2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a
- 18 special interrogatory for such purpose; or
- 19 (3) Found by the court, if the matter be tried by the court without a jury.

NOTE: The purpose of this bill is to increase the minimum sentence by three years for individuals convicted of manufacturing, delivering, or transporting controlled substances in the presence of a minor.

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