

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 499

BY SENATOR WELD

[Introduced March 1, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-406 of the Code of West Virginia, 1931, as amended,
2 relating to parole eligibility for drug distribution offenses; and adding distribution in, on, or
3 within 100 feet of real property comprising a recovery residence, or offering treatment or
4 counseling to persons suffering from substance use disorder.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4.OFFENSES AND PENALTIES.

**§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21;
distribution by persons 18 or over in, on, or within 1,000 feet of, school or college;
distribution by persons 18 or over in, on, or within 200 feet of a public library;
increasing mandatory period of incarceration prior to parole eligibility.**

1 (a) Notwithstanding any other provision of law to the contrary, a person is ineligible for
2 parole for a period of three years if he or she is sentenced to the custody of the Commissioner of
3 Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a
4 felony violation under the provisions of §60A-4-401(a)(i) of this code for distribution of a controlled
5 substance and:

6 (1) Is 21 years of age or older at the time of the distribution upon which the conviction is
7 based, and the person to whom the controlled substance was distributed was under the age of
8 18 years at the time of the distribution;

9 (2) Is 18 years of age or older and the distribution upon which the conviction is based
10 occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary,
11 vocational or secondary school or a public or private college, junior college or university in this
12 state; or

13 (3) Is 18 years of age or older and the distribution upon which the conviction is based
14 occurred in, on, or within 200 feet of, the real property comprising a public library in this state; or

15 (4) Is 18 years of age or older and the distribution upon which the conviction is based
16 occurred in, on, or within 100 feet of real property comprising a recovery residence, as defined in

17 §16-59-1 of this code, or offering treatment or counseling to persons suffering from substance
18 use disorder.

19 (b) Notwithstanding any other provision of law to the contrary, a person is ineligible for
20 parole for a period of two years if he or she is sentenced to the custody of the Commissioner of
21 Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a
22 felony violation under the provisions of §60A-4-401(a)(ii) of this code for distribution of a controlled
23 substance and:

24 (1) Is 21 years of age or older at the time of the distribution upon which the conviction is
25 based, and the person to whom the controlled substance was distributed was under the age of
26 18 years at the time of the distribution;

27 (2) Is 18 years of age or older and the distribution upon which the conviction is based
28 occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary,
29 vocational or secondary school or a public or private college, junior college or university in this
30 state; or

31 (3) Is 18 years of age or older and the distribution upon which the conviction is based
32 occurred in, on, or within 200 feet of, the real property comprising a public library in this state; or

33 (4) Is 18 years of age or older and the distribution upon which the conviction is based
34 occurred in, on, or within 100 feet of real property comprising a recovery residence, as defined in
35 §16-59-1 of this code, or offering treatment or counseling to persons suffering from substance
36 use disorder.

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

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

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

- 43 (3) Found by the court, if the matter be tried by the court without a jury.
- 44 (d) Nothing in this section limits the sentencing alternatives made available to circuit court
- 45 judges under other provisions of this code.

NOTE: The bill adds as a factor to be considered for parole eligibility whether the defendant was 18 years of age and the distribution upon which the conviction is based occurred in, on, or within 100 feet of real property comprising a recovery residence as defined in §16-59-1 of this code, or offering treatment or counseling to persons suffering from substance use disorder.

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