

[First Reprint]

ASSEMBLY, No. 2762

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 19, 2008

Sponsored by:

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District 15 (Mercer)

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SYNOPSIS

Authorizes court to waive or reduce parole ineligibility or grant probation for drug-free school zone violations under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on May 22, 2008, with amendments.



1 AN ACT concerning distributing, dispensing or possessing
2 controlled dangerous substances on or near school property and
3 amending P.L.1987, c.101.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read
9 as follows:

10 1. a. Any person who violates subsection a. of N.J.S.2C:35-5 by
11 distributing, dispensing or possessing with intent to distribute a
12 controlled dangerous substance or controlled substance analog
13 while on any school property used for school purposes which is
14 owned by or leased to any elementary or secondary school or school
15 board, or within 1,000 feet of such school property or a school bus,
16 or while on any school bus, is guilty of a crime of the third degree
17 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
18 the court to a term of imprisonment. Where the violation involves
19 less than one ounce of marijuana, the term of imprisonment shall
20 include the imposition of a minimum term which shall be fixed at,
21 or between, one-third and one-half of the sentence imposed, or one
22 year, whichever is greater, during which the defendant shall be
23 ineligible for parole. In all other cases, the term of imprisonment
24 shall include the imposition of a minimum term which shall be
25 fixed at, or between, one-third and one-half of the sentence
26 imposed, or three years, whichever is greater, during which the
27 defendant shall be ineligible for parole. Notwithstanding the
28 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
29 **[\$150,000.00]** \$150,000 may also be imposed upon any conviction
30 for a violation of this section.

31 b. (1) Notwithstanding the provisions of N.J.S.2C:35-12 or
32 subsection a. of this section, the court may waive or reduce the
33 minimum term of parole ineligibility required under subsection a. of
34 this section or place the defendant on probation pursuant to
35 paragraph (2) of subsection b. of N.J.S.2C:43-2. In making this
36 determination, the court shall consider:

37 (a) the extent of the defendant's prior criminal record and the
38 seriousness of the offenses for which the defendant has been
39 convicted;

40 (b) the specific location of the present offense in relation to the
41 school property, including distance from the school and the
42 reasonable likelihood of exposing children to drug-related activities
43 at that location;

44 (c) whether school was in session at the time of the offense; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted May 22, 2008.

1 (d) whether children were present at or in the immediate vicinity
2 of the location when the offense took place.

3 (2) The court shall not waive or reduce the minimum term of
4 parole ineligibility or sentence the defendant to probation if it finds
5 that:

6 (a) the offense took place while on any school property used for
7 school purposes which is owned by or leased to any elementary or
8 secondary school board, or while on any school bus; or

9 (b) the defendant in the course of committing the offense used or
10 threatened violence, was in possession of a firearm, or committed a
11 violation of subsection b. of N.J.S.2C:29-2.

12 If the court at sentencing elects not to impose a minimum term of
13 imprisonment and parole ineligibility pursuant to this subsection,
14 imposes a term of parole ineligibility less than the minimum term
15 prescribed in subsection a. of this section, or places the defendant
16 on probation for a violation of subsection a. of this section, the
17 sentence shall not become final for 10 days in order to permit the
18 prosecution to appeal the court's finding and the sentence imposed.

19 'The Attorney General shall develop guidelines to ensure the
20 uniform exercise of discretion in making determinations regarding
21 whether to appeal a decision to waive or reduce the minimum term
22 of parole ineligibility or place the defendant on probation.'¹

23 Nothing in this subsection shall be construed to establish a basis
24 for overcoming a presumption of imprisonment authorized or
25 required by subsection d. of N.J.S.2C:44-1, or a basis for not
26 imposing a term of imprisonment or term of parole ineligibility
27 authorized or required to be imposed pursuant to subsection f. of
28 N.J.S.2C:43-6 or upon conviction for a crime other than the offense
29 set forth in this subsection.

30 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
31 provisions of law, a conviction arising under this section shall not
32 merge with a conviction for a violation of subsection a. of
33 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or
34 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).

35 d. It shall be no defense to a prosecution for a violation of this
36 section that the actor was unaware that the prohibited conduct took
37 place while on or within 1,000 feet of any school property. Nor
38 shall it be a defense to a prosecution under this section, or under
39 any other provision of this title, that no juveniles were present on
40 the school property at the time of the offense or that the school was
41 not in session.

42 e. It is an affirmative defense to prosecution for a violation of
43 this section that the prohibited conduct took place entirely within a
44 private residence, that no person 17 years of age or younger was
45 present in such private residence at any time during the commission
46 of the offense, and that the prohibited conduct did not involve
47 distributing, dispensing or possessing with the intent to distribute or
48 dispense any controlled dangerous substance or controlled

1 substance analog for profit. The affirmative defense established in
2 this section shall be proved by the defendant by a preponderance of
3 the evidence. Nothing herein shall be construed to establish an
4 affirmative defense with respect to a prosecution for an offense
5 defined in any other section of this chapter.

6 f. In a prosecution under this section, a map produced or
7 reproduced by any municipal or county engineer for the purpose of
8 depicting the location and boundaries of the area on or within 1,000
9 feet of any property used for school purposes which is owned by or
10 leased to any elementary or secondary school or school board, or a
11 true copy of such a map, shall, upon proper authentication, be
12 admissible and shall constitute prima facie evidence of the location
13 and boundaries of those areas, provided that the governing body of
14 the municipality or county has adopted a resolution or ordinance
15 approving the map as official finding and record of the location and
16 boundaries of the area or areas on or within 1,000 feet of the school
17 property. Any map approved pursuant to this section may be
18 changed from time to time by the governing body of the
19 municipality or county. The original of every map approved or
20 revised pursuant to this section, or a true copy thereof, shall be filed
21 with the clerk of the municipality or county, and shall be
22 maintained as an official record of the municipality or county.
23 Nothing in this section shall be construed to preclude the
24 prosecution from introducing or relying upon any other evidence or
25 testimony to establish any element of this offense; nor shall this
26 section be construed to preclude the use or admissibility of any map
27 or diagram other than one which has been approved by the
28 governing body of a municipality or county, provided that the map
29 or diagram is otherwise admissible pursuant to the Rules of
30 Evidence.

31 (cf: P.L.1997, c.181, s.5)

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33 2. This act shall take effect immediately.