

ASSEMBLY, No. 162

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen GIBSON and ASSELTA

1 AN ACT concerning distributing, dispensing, or possessing controlled  
2 dangerous substances or controlled substance analogs and  
3 supplementing chapter 35 of Title 2C of the New Jersey Statutes.  
4

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

7  
8 1. a. Any person who violates subsection a. of N.J.S.2C:35-5 by  
9 distributing, dispensing or possessing with intent to distribute a  
10 controlled dangerous substance or controlled substance analog while  
11 in, on or within 500 feet of the real property comprising a public  
12 housing facility, a public park, or a public building is guilty of a crime  
13 of the second degree, except that it is a crime of the third degree if the  
14 violation involved less than one ounce of marijuana.

15 b. It shall be no defense to a prosecution for violation of this  
16 section that the actor was unaware that the prohibited conduct took  
17 place while on or within 500 feet of a public housing facility, a public  
18 park, or a public building.

19 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
20 provisions of law, a conviction arising under this section shall not  
21 merge with a conviction for a violation of subsection a. of  
22 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or  
23 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).  
24 Nothing in this section shall be construed to preclude or limit a  
25 prosecution or conviction for a violation of N.J.S.2C:35-7 or any other  
26 offense defined in this chapter.

27 d. It is an affirmative defense to prosecution for a violation of this  
28 section that the prohibited conduct did not involve distributing,  
29 dispensing or possessing with the intent to distribute or dispense any  
30 controlled dangerous substance or controlled substance analog for  
31 profit, and that the prohibited conduct did not involve distribution to  
32 a person 17 years of age or younger. The affirmative defense  
33 established in this section shall be proved by the defendant by a  
34 preponderance of the evidence. Nothing herein shall be construed to  
35 establish an affirmative defense with respect to a prosecution for an

1 offense defined in any other section of this chapter.

2 e. In a prosecution under this section, a map produced or  
3 reproduced by any municipal or county engineer for the purpose of  
4 depicting the location and boundaries of the area on or within 500 feet  
5 of a public housing facility which is owned by or leased to a housing  
6 authority according to the "Local Housing Authorities Law" P.L.1938,  
7 c.19 (C.55:14A-1 et seq.), repealed by P.L.1992, c.79, the area in or  
8 within 500 feet of a public park, or the area in or within 500 feet of a  
9 public building, or a true copy of such a map, shall, upon proper  
10 authentication, be admissible and shall constitute prima facie evidence  
11 of the location and boundaries of those areas, provided that the  
12 governing body of the municipality or county has adopted a resolution  
13 or ordinance approving the map as official finding and record of the  
14 location and boundaries of the area or areas on or within 500 feet of  
15 a public housing facility, a public park, or a public building. Any map  
16 approved pursuant to this section may be changed from time to time  
17 by the governing body of the municipality or county. The original of  
18 every map approved or revised pursuant to this section, or a true copy  
19 thereof, shall be filed with the clerk of the municipality or county, and  
20 shall be maintained as an official record of the municipality or county.  
21 Nothing in this section shall be construed to preclude the prosecution  
22 from introducing or relying upon any other evidence or testimony to  
23 establish any element of this offense; nor shall this section be  
24 construed to preclude the use or admissibility of any map or diagram  
25 other than one which has been approved by the governing body of a  
26 municipality or county, provided that the map or diagram is otherwise  
27 admissible pursuant to the Rules of Evidence.

28 f. As used in this act:

29 "Public housing facility" means any dwelling, complex of dwellings,  
30 accommodation, building, structure or facility and real property of any  
31 nature appurtenant thereto and used in connection therewith, which is  
32 owned by or leased to a local housing authority in accordance with the  
33 "Local Housing Authorities Law," P.L.1938, c.19 (C.55:14A-1 et  
34 seq.) for the purpose of providing living accommodations to persons  
35 of low income.

36 "Public park" means a park, playground, picnic area, square,  
37 monument, beach, waterfront, recreation area, conservation area, or  
38 similar place or property, or any open space, owned or controlled by  
39 a State, county or local government unit.

40 "Public building" means any building, structure, facility or complex  
41 which is intended to provide offices, courtrooms, hearing rooms,  
42 auditoriums, meeting rooms, libraries, museums and the like, which are  
43 intended for the use or accommodation of the general public or for any  
44 category or classification thereof in connection with the furtherance of  
45 public law or policy necessarily or incidentally requiring the provision  
46 of such accommodations or facilities, together with all its grounds and

1 appurtenant structures and facilities.

2

3 2. This act shall take effect immediately.

4

5

6

STATEMENT

7

8 This bill classifies the distributing, dispensing or possessing of  
9 controlled dangerous substances or controlled substance analogs in or  
10 within 500 feet of a public housing facility, a public park or a public  
11 building as a crime of the second degree and provides that if the  
12 violation in the same location involves less than one ounce of  
13 marijuana, the offense is classified as a crime of the third degree.

14 The bill further provides that it is no defense to a charge of  
15 trafficking within this designated zone if the person was unaware that  
16 the prohibited conduct took place in or within 500 feet of a public  
17 housing facility, a public park or a public building. In addition, the  
18 substitute provides that a prosecution for trafficking near a public  
19 housing facility, public park or public building does not preclude a  
20 person from being prosecuted for any other drug-related criminal  
21 offense.

22 The bill provides that it is an affirmative defense to prosecution if  
23 the defendant proves the distribution was not for profit and that the  
24 distribution did not involve a juvenile.

25

26

27

28

29 Provides that the area surrounding a housing project, public park or  
30 public building shall be designated as a drug free zone.