

ASSEMBLY, No. 441

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROMA

1 AN ACT concerning the distribution of controlled dangerous
2 substances within 100 feet of a playground and amending P.L.1987,
3 c.101.

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

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8 1. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read as
9 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 while
13 on any school property used for school purposes which is owned by or
14 leased to any elementary or secondary school or school board, or
15 within 1,000 feet of such school property or a school bus, or while on
16 any school bus, is guilty of a crime of the third degree and shall,
17 except as provided in N.J.S.2C:35-12, be sentenced by the court to a
18 term of imprisonment. Where the violation involves less than one
19 ounce of marijuana, the term of imprisonment shall include the
20 imposition of a minimum term which shall be fixed at, or between,
21 one-third and one-half of the sentence imposed, or one year,
22 whichever is greater, during which the defendant shall be ineligible for
23 parole. In all other cases, the term of imprisonment shall include the
24 imposition of a minimum term which shall be fixed at, or between,
25 one-third and one-half of the sentence imposed, or three years,
26 whichever is greater, during which the defendant shall be ineligible for
27 parole. Notwithstanding the provisions of subsection b. of
28 N.J.S.2C:43-3, a fine of up to \$100,000.00 may also be imposed upon
29 any conviction for a violation of this section.

30 b. Any person who violates subsection a. of N.J.S.2C:35-5 by
31 distributing, dispensing or possessing with intent to distribute a
32 controlled dangerous substance or controlled substance analog while

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

Matter underlined thus is new matter.

1 on any State, municipal or county playground or place of public resort
2 and recreation between the hours of 7 a.m. and 11 p.m., or within 100
3 feet of such playground or place of public resort and recreation
4 between the hours of 7 a.m. and 11 p.m., is guilty of a crime of the
5 second degree and shall, except as provided in N.J.S.2C:35-12, be
6 sentenced by the court to a term of imprisonment of two years, during
7 which the defendant shall be ineligible for parole. The State,
8 municipality or county shall post a sign on the playground or place of
9 public resort and recreation which states: "Drug Free Recreation Zone:
10 Any person guilty of distributing, dispensing or possessing with intent
11 to distribute a controlled dangerous substance or substance analog on
12 or within 100 feet of these premises between the hours of 7 a.m. and
13 11 p.m. is guilty of a crime of the second degree and shall serve a
14 mandatory prison term of 2 years under New Jersey law."

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

20 d. It shall be no defense to a prosecution for a violation of this
21 section that the actor was unaware that the prohibited conduct took
22 place while on or within 1,000 feet of any school property or while on
23 or within 100 feet of any State, municipal or county playground or
24 place of public resort and recreation. Nor shall it be a defense to a
25 prosecution under this section, or under any other provision of this
26 title, that no juveniles were present on the school property at the time
27 of the offense [or], that the school was not in session, or that no
28 juveniles were present on the playground or place of public resort and
29 recreation.

30 e. It is an affirmative defense to prosecution for a violation of this
31 section that the prohibited conduct took place entirely within a private
32 residence, that no person 17 years of age or younger was present in
33 such private residence at any time during the commission of the
34 offense, and that the prohibited conduct did not involve distributing,
35 dispensing or possessing with the intent to distribute or dispense any
36 controlled dangerous substance or controlled substance analog for
37 profit. The affirmative defense established in this section shall be
38 proved by the defendant by a preponderance of the evidence. Nothing
39 herein shall be construed to establish an affirmative defense with
40 respect to a prosecution for an offense defined in any other section of
41 this chapter.

42 f. In a prosecution under this section, a map produced or
43 reproduced by any municipal or county engineer for the purpose of
44 depicting the location and boundaries of the area on or within 1,000
45 feet of any property used for school purposes which is owned by or
46 leased to any elementary or secondary school or school board, or the

1 location and boundaries of the area on or within 100 feet of any State,
2 municipal or county playground or place of public resort and
3 recreation. or a true copy of such a map, shall, upon proper
4 authentication, be admissible and shall constitute prima facie evidence
5 of the location and boundaries of those areas, provided that the
6 governing body of the municipality or county has adopted a resolution
7 or ordinance approving the map as official finding and record of the
8 location and boundaries of the area or areas on or within 1,000 feet of
9 the school property. Any map approved pursuant to this section may
10 be changed from time to time by the governing body of the
11 municipality or county. The original of every map approved or revised
12 pursuant to this section, or a true copy thereof, shall be filed with the
13 clerk of the [municipality or] county, and shall be maintained as an
14 official record of the [municipality or] county. Nothing in this section
15 shall be construed to preclude the prosecution from introducing or
16 relying upon any other evidence or testimony to establish any element
17 of this offense; nor shall this section be construed to preclude the use
18 or admissibility of any map or diagram other than one which has been
19 approved by the governing body of a municipality or county, provided
20 that the map or diagram is otherwise admissible pursuant to the Rules
21 of Evidence.

22 (cf: P.L.1988, c.44, s.3)

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24 2. This act shall take effect immediately.

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STATEMENT

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29 Currently, under the provisions of N.J.S.2C:35-7, a person who
30 distributes, dispenses or possesses with intent to distribute controlled
31 dangerous substances on or within 1,000 feet of any school property
32 is subject to enhanced penalties.

33 However, State, municipal and county playgrounds are not covered
34 by this statute, and the sponsor believes that these playgrounds may
35 often be centers of substantial drug activity. This bill provides that a
36 person who distributes, dispenses or possesses with intent to distribute
37 any controlled dangerous substance on or within 100 feet of a State,
38 municipal or county playground or place of public resort and
39 recreation between the hours of 7 a.m. and 11 p.m., or within 100 feet
40 of such playground or place of public resort and recreation between
41 these hours, is guilty of a crime of the second degree and shall be
42 sentenced by the court to a mandatory minimum term of imprisonment
43 for two years, during which the defendant shall be ineligible for parole.

44 The bill requires the State, municipality or county to post a sign on
45 a playground or place of public resort and recreation which states:
46 "Drug Free Recreation Zone: Any person guilty of distributing,

1 dispensing or possessing with intent to distribute a controlled
2 dangerous substance or substance analog on or within 100 feet of
3 these premises between the hours of 7 a.m. and 11 p.m. is guilty of a
4 crime of the second degree and shall serve a mandatory prison term of
5 2 years under New Jersey law."

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10 Provides mandatory minimum term of 2 years imprisonment for
11 distribution of controlled dangerous substances within 100 feet of a
12 playground or recreation area.