

ASSEMBLY, No. 2848

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Assemblymen **HOLZAPFEL** and **WOLFE**

1 **AN ACT** concerning community service and loss of driving privileges
2 for juveniles for certain drug offenses and amending N.J.S.2C:35-
3 10 and P.L. 1982, c. 77.

4

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

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8 1. N.J.S.2C:35-10 is amended to read as follows:

9 2C:35-10. Possession, Use or Being Under the Influence, or Failure
10 to Make Lawful Disposition.

11 a. It is unlawful for any person, knowingly or purposely, to obtain,
12 or to possess, actually or constructively, a controlled dangerous
13 substance or controlled substance analog, unless the substance was
14 obtained directly, or pursuant to a valid prescription or order form from
15 a practitioner, while acting in the course of his professional practice,
16 or except as otherwise authorized by P.L. 1970, c. 226 (C. 24:21-1 et
17 seq.). Any person who violates this section with respect to:

18 (1) A controlled dangerous substance, or its analog, classified in
19 Schedule I, II, III or IV other than those specifically covered in this
20 section, is guilty of a crime of the third degree except that,
21 notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a
22 fine of up to \$25,000.00 may be imposed;

23 (2) Any controlled dangerous substance, or its analog, classified in
24 Schedule V, is guilty of a crime of the fourth degree except that,
25 notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a
26 fine of up to \$15,000.00 may be imposed;

27 (3) Possession of more than 50 grams of marijuana, including any
28 adulterants or dilutants, or more than five grams of hashish is guilty of
29 a crime of the fourth degree, except that, notwithstanding the
30 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$15,000.00
31 may be imposed; or

32 (4) Possession of 50 grams or less of marijuana, including any
33 adulterants or dilutants, or five grams or less of hashish is a disorderly
34 person.

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 Any person who commits any offense defined in this section while
2 on any property used for school purposes which is owned by or leased
3 to any elementary or secondary school or school board, or within 1,000
4 feet of any such school property or a school bus, or while on any
5 school bus, and who is not sentenced to a term of imprisonment, shall,
6 in addition to any other sentence which the court may impose, be
7 required to perform not less than 100 hours of community service.

8 In addition to any disposition authorized by this Title, the
9 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43) or any other
10 statute indicating the dispositions that may be ordered for an
11 adjudication of delinquency, any person who commits or engages in
12 conduct which, if committed by an adult, would constitute any offense
13 defined in this section while on any property used for school purposes
14 which is owned by or leased to any elementary or secondary school or
15 school board, or within 1,000 feet of any such school property or a
16 school bus, or while on any school bus, and who is not sentenced to a
17 term of imprisonment or placed in detention, in addition to any other
18 sentence or disposition the which the court may impose, shall be
19 required to perform not less than 100 hours of community service and
20 shall be subject to the loss or postponement of driving privileges as set
21 forth in N.J.S.2C:35-16. Every person placed in supervisory treatment
22 pursuant to the provisions of N.J.S. 2C:36A-1 or N.J.S. 2C:43-12 for
23 any offense defined in this section and subject to this paragraph or who
24 receives an adjournment of formal entry of disposition of the case
25 pursuant to paragraph (1) of subsection b. of section 24 of P.L.1982, c.
26 77 (C. 2A:4A-43) or who is otherwise diverted to an intake services
27 conference, juvenile conference committee or any other pre-
28 adjudication or post-adjudication diversion program, shall be required
29 to perform the community service prescribed herein and shall be
30 subject to the loss or postponement of driving privileges as set forth in
31 N.J.S.2C:35-16.

32 b. Any person who uses or who is under the influence of any
33 controlled dangerous substance, or its analog, for a purpose other than
34 the treatment of sickness or injury as lawfully prescribed or
35 administered by a physician is a disorderly person.

36 In a prosecution under this subsection, it shall not be necessary for
37 the State to prove that the accused did use or was under the influence
38 of any specific drug, but it shall be sufficient for a conviction under
39 this subsection for the State to prove that the accused did use or was
40 under the influence of some controlled dangerous substance,
41 counterfeit controlled dangerous substance, or controlled substance
42 analog, by proving that the accused did manifest physical and
43 physiological symptoms or reactions caused by the use of any
44 controlled dangerous substance or controlled substance analog.

45 c. Any person who knowingly obtains or possesses a controlled
46 dangerous substance or controlled substance analog in violation of

1 subsection a. of this section and who fails to voluntarily deliver the
2 substance to the nearest law enforcement officer is guilty of a
3 disorderly persons offense. Nothing in this subsection shall be
4 construed to preclude a prosecution or conviction for any other offense
5 defined in this title or any other statute.

6 (cf:P.L.1988,c.44,s.5)

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8 2. Section 24 of P.L.1982, c. 77 (C.2A:4A-43) is amended to read
9 as follows:

10 24. Disposition of delinquency cases. a. In determining the
11 appropriate disposition for a juvenile adjudicated delinquent the court
12 shall weigh the following factors:

13 (1) The nature and circumstances of the offense;

14 (2) The degree of injury to persons or damage to property caused
15 by the juvenile's offense;

16 (3) The juvenile's age, previous record, prior social service received
17 and out-of-home placement history;

18 (4) Whether the disposition supports family strength, responsibility
19 and unity and the well-being and physical safety of the juvenile;

20 (5) Whether the disposition provides for reasonable participation
21 by the child's parent, guardian, or custodian, provided, however, that
22 the failure of a parent or parents to cooperate in the disposition shall
23 not be weighed against the juvenile in arriving at an appropriate
24 disposition;

25 (6) Whether the disposition recognizes and treats the unique
26 physical, psychological and social characteristics and needs of the
27 child;

28 (7) Whether the disposition contributes to the developmental needs
29 of the child, including the academic and social needs of the child
30 where the child has mental retardation or learning disabilities; and

31 (8) Any other circumstances related to the offense and the juvenile's
32 social history as deemed appropriate by the court.

33 b. If a juvenile is adjudged delinquent, and except to the extent that
34 an additional specific disposition is required pursuant to subsection e.
35 or f. of this section, the court may order incarceration pursuant to
36 section 25 of P.L.1982, c.77 (C.2A:4A-44) or any one or more of the
37 following dispositions:

38 (1) Adjourn formal entry of disposition of the case for a period not
39 to exceed 12 months for the purpose of determining whether the
40 juvenile makes a satisfactory adjustment, and if during the period of
41 continuance the juvenile makes such an adjustment, dismiss the
42 complaint; provided that if the court adjourns formal entry of
43 disposition of delinquency for a violation of an offense defined in
44 chapter 35 or 36 of Title 2C, of the New Jersey Statutes the court shall
45 assess the mandatory penalty set forth in N.J.S.2C:35-15 and shall
46 impose the community service requirement set forth in N.J.S.2C:35-10

1 but may waive imposition of the penalty set forth in N.J.S.2C:35-16 for
2 juveniles adjudicated delinquent except for juveniles for whom the loss
3 or postponement of driving privileges is required as set forth in
4 N.J.S.2C:35-10;

5 (2) Release the juvenile to the supervision of the juvenile's parent
6 or guardian;

7 (3) Place the juvenile on probation to the chief probation officer of
8 the county or to any other suitable person who agrees to accept the
9 duty of probation supervision for a period not to exceed three years
10 upon such written conditions as the court deems will aid rehabilitation
11 of the juvenile;

12 (4) Transfer custody of the juvenile to any relative or other person
13 determined by the court to be qualified to care for the juvenile;

14 (5) Place the juvenile under the care of the Department of Human
15 Services under the responsibility of the Division of Youth and Family
16 Services pursuant to P.L.1951, c.138 (C.30:4C-1 et seq.) for the
17 purpose of providing services in or out of the home. Within 14 days,
18 unless for good cause shown, but not later than 30 days, the
19 Department of Human Services shall submit to the court a service plan,
20 which shall be presumed valid, detailing the specifics of any
21 disposition order. The plan shall be developed within the limits of
22 fiscal and other resources available to the department. If the court
23 determines that the service plan is inappropriate, given existing
24 resources, the department may request a hearing on that determination;

25 (6) Place the juvenile under the care and custody of the
26 Commissioner of the Department of Human Services for the purpose
27 of receiving the services of the Division of Developmental Disabilities
28 of that department, provided that the juvenile has been determined to
29 be eligible for those services under P.L.1965, c.59, s.16 (C.30:4-25.4);

30 (7) Commit the juvenile, pursuant to applicable laws and the Rules
31 of Court governing civil commitment, to the Department of Human
32 Services under the responsibility of the Division of Mental Health
33 Services for the purpose of placement in a suitable public or private
34 hospital or other residential facility for the treatment of persons who
35 are mentally ill, on the ground that the juvenile is in need of
36 involuntary commitment;

37 (8) Fine the juvenile an amount not to exceed the maximum
38 provided by law for such a crime or offense if committed by an adult
39 and which is consistent with the juvenile's income or ability to pay and
40 financial responsibility to the juvenile's family, provided that the fine
41 is specially adapted to the rehabilitation of the juvenile or to the
42 deterrence of the type of crime or offense. If the fine is not paid due to
43 financial limitations, the fine may be satisfied by requiring the juvenile
44 to submit to any other appropriate disposition provided for in this
45 section;

46 (9) Order the juvenile to make restitution to a person or entity who

1 has suffered loss resulting from personal injuries or damage to property
2 as a result of the offense for which the juvenile has been adjudicated
3 delinquent. The court may determine the reasonable amount, terms
4 and conditions of restitution. If the juvenile participated in the offense
5 with other persons, the participants shall be jointly and severally
6 responsible for the payment of restitution. The court shall not require
7 a juvenile to make full or partial restitution if the juvenile reasonably
8 satisfies the court that the juvenile does not have the means to make
9 restitution and could not reasonably acquire the means to pay
10 restitution;

11 (10) Order that the juvenile perform community services under the
12 supervision of a probation division or other agency or individual
13 deemed appropriate by the court. Such services shall be compulsory
14 and reasonable in terms of nature and duration. Such services may be
15 performed without compensation, provided that any money earned by
16 the juvenile from the performance of community services may be
17 applied towards any payment of restitution or fine which the court has
18 ordered the juvenile to pay;

19 (11) Order that the juvenile participate in work programs which are
20 designed to provide job skills and specific employment training to
21 enhance the employability of job participants. Such programs may be
22 without compensation, provided that any money earned by the juvenile
23 from participation in a work program may be applied towards any
24 payment of restitution or fine which the court has ordered the juvenile
25 to pay;

26 (12) Order that the juvenile participate in programs emphasizing
27 self-reliance, such as intensive outdoor programs teaching survival
28 skills, including but not limited to camping, hiking and other
29 appropriate activities;

30 (13) Order that the juvenile participate in a program of academic or
31 vocational education or counseling, such as a youth service bureau,
32 requiring attendance at sessions designed to afford access to
33 opportunities for normal growth and development. This may require
34 attendance after school, evenings and weekends;

35 (14) Place the juvenile in a suitable residential or nonresidential
36 program for the treatment of alcohol or narcotic abuse, provided that
37 the juvenile has been determined to be in need of such services;

38 (15) Order the parent or guardian of the juvenile to participate in
39 appropriate programs or services when the court has found either that
40 such person's omission or conduct was a significant contributing factor
41 towards the commission of the delinquent act, or, under its authority
42 to enforce litigant's rights, that such person's omission or conduct has
43 been a significant contributing factor towards the ineffective
44 implementation of a court order previously entered in relation to the
45 juvenile;

46 (16) (a) Place the juvenile in a nonresidential program operated by

1 a public or private agency, providing intensive services to juveniles for
2 specified hours, which may include education, counseling to the
3 juvenile and the juvenile's family if appropriate, vocational training,
4 employment counseling, work or other services;

5 (b) Place the juvenile under the custody of the Juvenile Justice
6 Commission established pursuant to section 2 of P.L.1995, c.284
7 (C.52:17B-170) for placement with any private group home or private
8 residential facility with which the commission has entered into a
9 purchase of service contract;

10 (17) Instead of or in addition to any disposition made according to
11 this section, the court may postpone, suspend, or revoke for a period
12 not to exceed two years the driver's license, registration certificate, or
13 both of any juvenile who used a motor vehicle in the course of
14 committing an act for which the juvenile was adjudicated delinquent.
15 In imposing this disposition and in deciding the duration of the
16 postponement, suspension, or revocation, the court shall consider the
17 severity of the delinquent act and the potential effect of the loss of
18 driving privileges on the juvenile's ability to be rehabilitated. Any
19 postponement, suspension, or revocation shall be imposed
20 consecutively with any custodial commitment;

21 (18) Order that the juvenile satisfy any other conditions reasonably
22 related to the rehabilitation of the juvenile; or

23 (19) Order a parent or guardian who has failed or neglected to
24 exercise reasonable supervision or control of a juvenile who has been
25 adjudicated delinquent to make restitution to any person or entity who
26 has suffered a loss as a result of that offense. The court may determine
27 the reasonable amount, terms and conditions of restitution.

28 c. (1) Except as otherwise provided in subsections e. and f. of this
29 section, if the county in which the juvenile has been adjudicated
30 delinquent has a juvenile detention facility meeting the physical and
31 program standards established pursuant to this subsection by the
32 Juvenile Justice Commission, the court may, in addition to any of the
33 dispositions not involving placement out of the home enumerated in
34 this section, incarcerate the juvenile in the youth detention facility in
35 that county for a term not to exceed 60 consecutive days. Counties
36 which do not operate their own juvenile detention facilities may
37 contract for the use of approved commitment programs with counties
38 with which they have established agreements for the use of
39 pre-disposition juvenile detention facilities. The Juvenile Justice
40 Commission shall promulgate such rules and regulations from time to
41 time as deemed necessary to establish minimum physical facility and
42 program standards for the use of juvenile detention facilities pursuant
43 to this subsection.

44 (2) No juvenile may be incarcerated in any county detention facility
45 unless the county has entered into an agreement with the Juvenile
46 Justice Commission concerning the use of the facility for sentenced

1 juveniles. Upon agreement with the county, the Juvenile Justice
2 Commission shall certify detention facilities which may receive
3 juveniles sentenced pursuant to this subsection and shall specify the
4 capacity of the facility that may be made available to receive such
5 juveniles; provided, however, that in no event shall the number of
6 juveniles incarcerated pursuant to this subsection exceed 50% of the
7 maximum capacity of the facility.

8 (3) The court may fix a term of incarceration under this subsection
9 where:

10 (a) The act for which the juvenile was adjudicated delinquent, if
11 committed by an adult, would have constituted a crime or repetitive
12 disorderly persons offense;

13 (b) Incarceration of the juvenile is consistent with the goals of
14 public safety, accountability and rehabilitation and the court is clearly
15 convinced that the aggravating factors substantially outweigh the
16 mitigating factors as set forth in section 25 of P.L.1982, c.77
17 (C.2A:4A-44); and

18 (c) The detention facility has been certified for admission of
19 adjudicated juveniles pursuant to paragraph (2).

20 (4) If as a result of incarceration of adjudicated juveniles pursuant
21 to this subsection, a county is required to transport a predisposition
22 juvenile to a juvenile detention facility in another county, the costs of
23 such transportation shall be borne by the Juvenile Justice Commission.

24 d. Whenever the court imposes a disposition upon an adjudicated
25 delinquent which requires the juvenile to perform a community
26 service, restitution, or to participate in any other program provided for
27 in this section other than subsection c., the duration of the juvenile's
28 mandatory participation in such alternative programs shall extend for
29 a period consistent with the program goal for the juvenile and shall in
30 no event exceed one year beyond the maximum duration permissible
31 for the delinquent if the juvenile had been committed to a term of
32 incarceration.

33 e. In addition to any disposition the court may impose pursuant to
34 this section or section 25 of P.L.1982, c.77 (C.2A:4A-44), the
35 following orders shall be included in dispositions of the adjudications
36 set forth below:

37 (1) An order of incarceration for a term of the duration authorized
38 pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44)
39 or an order to perform community service pursuant to paragraph (10)
40 of subsection b. of this section for a period of at least 60 days, if the
41 juvenile has been adjudicated delinquent for an act which, if
42 committed by an adult, would constitute the crime of theft of a motor
43 vehicle, or the crime of unlawful taking of a motor vehicle in violation
44 of subsection c. of N.J.S.2C:20-10, or the third degree crime of eluding
45 in violation of subsection b. of N.J.S.2C:29-2;

46 (2) An order of incarceration for a term of the duration authorized

1 pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44)
2 which shall include a minimum term of 60 days during which the
3 juvenile shall be ineligible for parole, if the juvenile has been
4 adjudicated delinquent for an act which, if committed by
5 an adult, would constitute the crime of aggravated assault in violation
6 of paragraph (6) of subsection b. of N.J.S.2C:12-1, the second degree
7 crime of eluding in violation of subsection b. of N.J.S.2C:29-2, or theft
8 of a motor vehicle, in a case in which the juvenile has previously been
9 adjudicated delinquent for an act, which if committed by an adult,
10 would constitute unlawful taking of a motor vehicle or theft of a motor
11 vehicle;

12 (3) An order to perform community service pursuant to paragraph
13 (10) of subsection b. of this section for a period of at least 30 days, if
14 the juvenile has been adjudicated delinquent for an act which, if
15 committed by an adult, would constitute the fourth degree crime of
16 unlawful taking of a motor vehicle in violation of subsection b. of
17 N.J.S.2C:20-10;

18 (4) An order of incarceration for a term of the duration authorized
19 pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44)
20 which shall include a minimum term of 30 days during which the
21 juvenile shall be ineligible for parole, if the juvenile has been
22 adjudicated delinquent for an act which, if committed by an adult,
23 would constitute the crime of unlawful taking of a motor vehicle in
24 violation of N.J.S.2C:20-10 or the third degree crime of eluding in
25 violation of subsection b. of N.J.S.2C:29-2, and if the juvenile has
26 previously been adjudicated delinquent for an act which, if committed
27 by an adult, would constitute either theft of a motor vehicle, the
28 unlawful taking of a motor vehicle or eluding.

29 f. (1) The minimum terms of incarceration required pursuant to
30 subsection e. of this section shall be imposed regardless of the weight
31 or balance of factors set forth in this section or in section 25 of
32 P.L.1982, c.77 (C.2A:4A-44), but the weight and balance of those
33 factors shall determine the length of the term of incarceration
34 appropriate, if any, beyond any mandatory minimum term required
35 pursuant to subsection e. of this section.

36 (2) When a court in a county that does not have a juvenile detention
37 facility or a contractual relationship permitting incarceration pursuant
38 to subsection c. of this section is required to impose a term of
39 incarceration pursuant to subsection e. of this section, the court may,
40 subject to limitations on commitment to State correctional facilities of
41 juveniles who are under the age of 11 or developmentally disabled, set
42 a term of incarceration consistent with subsection c. which shall be
43 served in a State correctional facility. When a juvenile who because of
44 age or developmental disability cannot be committed to a State
45 correctional facility or cannot be incarcerated in a county facility, the
46 court shall order a disposition appropriate as an alternative to any

1 incarceration required pursuant to subsection e.

2 (3) For purposes of subsection e. of this section, in the event that
3 a "boot camp" program for juvenile offenders should be developed and
4 is available, a term of commitment to such a program shall be
5 considered a term of incarceration.

6 (cf: P.L.1995,c.280,s.10)

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8 3. This act shall take effect immediately.

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STATEMENT

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13 This bill amends N.J.S.2C:35-10 to make clear that juveniles
14 engaging in possession of controlled dangerous substances while on
15 certain school property shall be required to perform not less than 100
16 hours of community service and shall be subject to the loss or
17 postponement of driving privileges as set forth in N.J.S.2C:35-16.
18 Presently any person convicted of violating the provisions of N.J.S.
19 2C:35-10 on any property used for school purposes which is owned by
20 or leased to any elementary or secondary school or school board, or
21 within 1,000 feet of any such school property or a school bus, or while
22 on any school bus shall perform the community service in addition to
23 any other sentence imposed. This bill clarifies that juveniles are
24 subject to the same community service requirement regardless of
25 whether the juvenile is diverted into any available program. The bill
26 also provides that these juveniles are subject to a mandatory loss or
27 postponement of driving privileges. The bill applies the requirement
28 to juveniles diverted to an intake services conference, juvenile
29 conference committee or any other pre-adjudication or post-
30 adjudication diversion program. The bill mandates community service
31 and the loss or postponement of driving privileges for any juvenile
32 including one who receives an adjournment of formal entry of
33 disposition pursuant to section 24 of P.L.1982, c. 77 (C. 2A:4A-43).
34 That section is also amended by this bill to provide that the judge may
35 not waive the community service and may not waive the loss or
36 postponement of driving privileges.

37 The sponsor believes that commission of these offenses should hold
38 consequences for juveniles. If no sanction is imposed the deterrent
39 effect on other juveniles is meaningless.

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44 Provides mandatory community service and loss of driving privileges
45 for juveniles for certain drug possession offenses.