

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2848

STATE OF NEW JERSEY

ADOPTED MAY 5, 1997

Sponsored by Assemblymen **HOLZAPFEL, GEIST, WOLFE,**
Assemblywomen **CRECCO, ALLEN,** Assemblymen **GREGG,**
LeFEVRE, BARNES and STEELE

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
10 Failure 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 fine
22 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 fine
26 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

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 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$15,000.00
2 may be imposed; or

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

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

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

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

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

1 c. Any person who knowingly obtains or possesses a controlled
2 dangerous substance or controlled substance analog in violation of
3 subsection a. of this section and who fails to voluntarily deliver the
4 substance to the nearest law enforcement officer is guilty of a
5 disorderly persons offense. Nothing in this subsection shall be
6 construed to preclude a prosecution or conviction for any other offense
7 defined in this title or any other statute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (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
31 or 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
47 a public or private agency, providing intensive services to juveniles for

1 specified hours, which may include education, counseling to the
2 juvenile and the juvenile's family if appropriate, vocational training,
3 employment counseling, work or other services;

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

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

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

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

27 (20) Place the juvenile, if eligible, in an appropriate juvenile
28 offender program established pursuant to P.L.1997, c.81 (C.30:8-61 et
29 al.).

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

46 (2) No juvenile may be incarcerated in any county detention
47 facility unless the county has entered into an agreement with the

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

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

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

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

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

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

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

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

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

47 (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 an adult,
5 would constitute the crime of aggravated assault in violation of
6 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
37 detention facility or a contractual relationship permitting incarceration
38 pursuant 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
47 incarceration required pursuant to subsection e.

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

5 (cf: P.L.1997, c.81, s.11)

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7 3. This act shall take effect immediately.

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12 _____ Provides mandatory community service and loss of driving privileges
13 for juveniles for certain drug possession offenses.