

SENATE, No. 1974

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Senator CIESLA

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

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

7
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
17 (C. 24:21-1 et seq.). Any person who violates this section with respect
18 to:

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

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

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

33 (4) Possession of 50 grams or less of marijuana, including any
34 adulterants or dilutants, or five grams or less of hashish is a disorderly
35 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,
26 c.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
47 subsection a. of this section and who fails to voluntarily deliver the

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

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

6

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

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

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

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

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

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

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

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

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

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

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

37 (1) Adjourn formal entry of disposition of the case for a period not
38 to exceed 12 months for the purpose of determining whether the
39 juvenile makes a satisfactory adjustment, and if during the period of
40 continuance the juvenile makes such an adjustment, dismiss the
41 complaint; provided that if the court adjourns formal entry of
42 disposition of delinquency for a violation of an offense defined in
43 chapter 35 or 36 of Title 2C, of the New Jersey Statutes the court shall
44 assess the mandatory penalty set forth in N.J.S.2C:35-15 and shall
45 impose the community service requirement set forth in N.J.S.2C:35-10
46 but may waive imposition of the penalty set forth in N.J.S.2C:35-16 for
47 juveniles adjudicated delinquent except for juveniles for whom the loss

1 or postponement of driving privileges is required as set forth in
2 N.J.S.2C:35-10;

3 (2) Release the juvenile to the supervision of the juvenile's parent
4 or guardian;

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

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

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

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

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

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

44 (9) Order the juvenile to make restitution to a person or entity who
45 has suffered loss resulting from personal injuries or damage to property
46 as a result of the offense for which the juvenile has been adjudicated
47 delinquent. The court may determine the reasonable amount, terms

1 and conditions of restitution. If the juvenile participated in the offense
2 with other persons, the participants shall be jointly and severally
3 responsible for the payment of restitution. The court shall not require
4 a juvenile to make full or partial restitution if the juvenile reasonably
5 satisfies the court that the juvenile does not have the means to make
6 restitution and could not reasonably acquire the means to pay
7 restitution;

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

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

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

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

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

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

43 (16) (a) Place the juvenile in a nonresidential program operated by
44 a public or private agency, providing intensive services to juveniles for
45 specified hours, which may include education, counseling to the
46 juvenile and the juvenile's family if appropriate, vocational training,
47 employment counseling, work or other services;

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

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

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

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

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

40 (2) No juvenile may be incarcerated in any county detention facility
41 unless the county has entered into an agreement with the Juvenile
42 Justice Commission concerning the use of the facility for sentenced
43 juveniles. Upon agreement with the county, the Juvenile Justice
44 Commission shall certify detention facilities which may receive
45 juveniles sentenced pursuant to this subsection and shall specify the
46 capacity of the facility that may be made available to receive such
47 juveniles; provided, however, that in no event shall the number of

1 juveniles incarcerated pursuant to this subsection exceed 50% of the
2 maximum capacity of the facility.

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

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

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

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

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

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

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

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

41 (2) An order of incarceration for a term of the duration authorized
42 pursuant to this section or section 25 of P.L.1982, c.77 (C.2A:4A-44)
43 which shall include a minimum term of 60 days during which the
44 juvenile shall be ineligible for parole, if the juvenile has been
45 adjudicated delinquent for an act which, if committed by
46 an adult, would constitute the crime of aggravated assault in violation
47 of paragraph (6) of subsection b. of N.J.S.2C:12-1, the second degree

1 crime of eluding in violation of subsection b. of N.J.S.2C:29-2, or theft
2 of a motor vehicle, in a case in which the juvenile has previously been
3 adjudicated delinquent for an act, which if committed by an adult,
4 would constitute unlawful taking of a motor vehicle or theft of a motor
5 vehicle;

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

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

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

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

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

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

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill amends N.J.S.2C:35-10 to make clear that juveniles
7 engaging in possession of controlled dangerous substances while on
8 certain school property shall be required to perform not less than 100
9 hours of community service and shall be subject to the loss or
10 postponement of driving privileges as set forth in N.J.S.2C:35-16.
11 Presently any person convicted of violating the provisions of N.J.S.
12 2C:35-10 on any property used for school purposes which is owned by
13 or leased to any elementary or secondary school or school board, or
14 within 1,000 feet of any such school property or a school bus, or while
15 on any school bus shall perform the community service in addition to
16 any other sentence imposed. This bill clarifies that juveniles are
17 subject to the same community service requirement regardless of
18 whether the juvenile is diverted into any available program. The bill
19 also provides that these juveniles are subject to a mandatory loss or
20 postponement of driving privileges. The bill applies the requirement
21 to juveniles diverted to an intake services conference, juvenile
22 conference committee or any other pre-adjudication or post-
23 adjudication diversion program. The bill mandates community service
24 and the loss or postponement of driving privileges for any juvenile
25 including one who receives an adjournment of formal entry of
26 disposition pursuant to section 24 of P.L. 1982, c. 77 (C. 2A:4A-43).
27 That section is also amended by this bill to provide that the judge may
28 not waive the community service and may not waive the loss or
29 postponement of driving privileges.

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

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