

[Second Reprint]

ASSEMBLY, No. 2762

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 19, 2008

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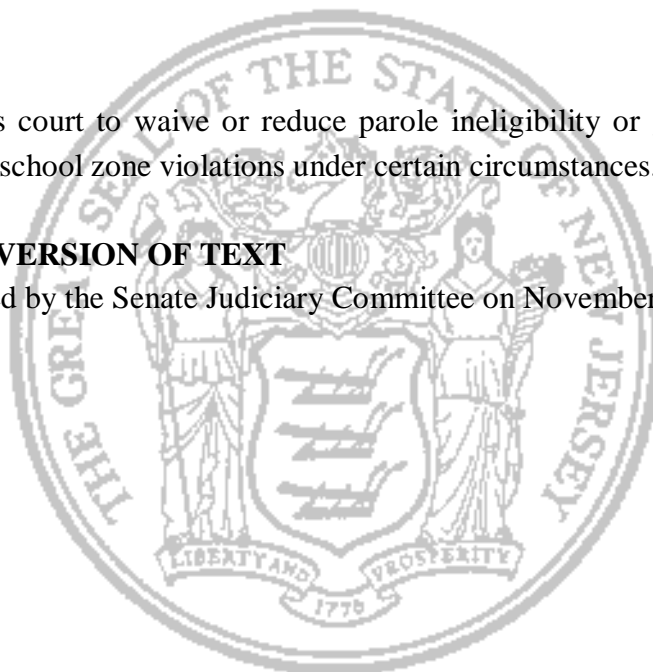
**Senators Lesniak, Cunningham, Scutari, Weinberg, Gordon, Ruiz, Turner
and Assemblyman Gusciora**

SYNOPSIS

Authorizes court to waive or reduce parole ineligibility or grant probation for drug-free school zone violations under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on November 23, 2009, with amendments.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning distributing, dispensing or possessing
2 controlled dangerous substances on or near school property²,
3 supplementing Title 2C of the New Jersey Statutes,² and
4 amending P.L.1987, c.101.

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

8
9 1. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read
10 as follows:

11 1. a. Any person who violates subsection a. of N.J.S.2C:35-5
12 by distributing, dispensing or possessing with intent to distribute a
13 controlled dangerous substance or controlled substance analog
14 while on any school property used for school purposes which is
15 owned by or leased to any elementary or secondary school or school
16 board, or within 1,000 feet of such school property or a school bus,
17 or while on any school bus, is guilty of a crime of the third degree
18 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
19 the court to a term of imprisonment. Where the violation involves
20 less than one ounce of marijuana, the term of imprisonment shall
21 include the imposition of a minimum term which shall be fixed at,
22 or between, one-third and one-half of the sentence imposed, or one
23 year, whichever is greater, during which the defendant shall be
24 ineligible for parole. In all other cases, the term of imprisonment
25 shall include the imposition of a minimum term which shall be
26 fixed at, or between, one-third and one-half of the sentence
27 imposed, or three years, whichever is greater, during which the
28 defendant shall be ineligible for parole. Notwithstanding the
29 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
30 [\$150,000.00] \$150,000 may also be imposed upon any conviction
31 for a violation of this section.

32 b. (1) Notwithstanding the provisions of N.J.S.2C:35-12 or
33 subsection a. of this section, the court may waive or reduce the
34 minimum term of parole ineligibility required under subsection a. of
35 this section or place the defendant on probation pursuant to
36 paragraph (2) of subsection b. of N.J.S.2C:43-2. In making this
37 determination, the court shall consider:

38 (a) the extent of the defendant's prior criminal record and the
39 seriousness of the offenses for which the defendant has been
40 convicted;

41 (b) the specific location of the present offense in relation to the
42 school property, including distance from the school and the
43 reasonable likelihood of exposing children to drug-related activities
44 at that location;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted May 22, 2008.

²Senate SJU committee amendments adopted November 23, 2009.

1 (c) whether school was in session at the time of the offense; and
2 (d) whether children were present at or in the immediate vicinity
3 of the location when the offense took place.

4 (2) The court shall not waive or reduce the minimum term of
5 parole ineligibility or sentence the defendant to probation if it finds
6 that:

7 (a) the offense took place while on any school property used for
8 school purposes which is owned by or leased to any elementary or
9 secondary school² or school² board, or while on any school bus; or

10 (b) the defendant in the course of committing the offense used
11 or threatened violence² [,] or² was in possession of a firearm² [, or
12 committed a violation of subsection b. of N.J.S.2C:29-2]².

13 If the court at sentencing elects not to impose a minimum term of
14 imprisonment and parole ineligibility pursuant to this subsection,
15 imposes a term of parole ineligibility less than the minimum term
16 prescribed in subsection a. of this section, or places the defendant
17 on probation for a violation of subsection a. of this section, the
18 sentence shall not become final for 10 days in order to permit the
19 prosecution to appeal the court's finding and the sentence imposed.

20 ¹The Attorney General shall develop guidelines to ensure the
21 uniform exercise of discretion in making determinations regarding
22 whether to appeal a decision to waive or reduce the minimum term
23 of parole ineligibility or place the defendant on probation.¹

24 Nothing in this subsection shall be construed to establish a basis
25 for overcoming a presumption of imprisonment authorized or
26 required by subsection d. of N.J.S.2C:44-1, or a basis for not
27 imposing a term of imprisonment or term of parole ineligibility
28 authorized or required to be imposed pursuant to subsection f. of
29 N.J.S.2C:43-6 or upon conviction for a crime other than the offense
30 set forth in this subsection.

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

36 d. It shall be no defense to a prosecution for a violation of this
37 section that the actor was unaware that the prohibited conduct took
38 place while on or within 1,000 feet of any school property. Nor
39 shall it be a defense to a prosecution under this section, or under
40 any other provision of this title, that no juveniles were present on
41 the school property at the time of the offense or that the school was
42 not in session.

43 e. It is an affirmative defense to prosecution for a violation of
44 this section that the prohibited conduct took place entirely within a
45 private residence, that no person 17 years of age or younger was
46 present in such private residence at any time during the commission
47 of the offense, and that the prohibited conduct did not involve
48 distributing, dispensing or possessing with the intent to distribute or

1 dispense any controlled dangerous substance or controlled
2 substance analog for profit. The affirmative defense established in
3 this section shall be proved by the defendant by a preponderance of
4 the evidence. Nothing herein shall be construed to establish an
5 affirmative defense with respect to a prosecution for an offense
6 defined in any other section of this chapter.

7 f. In a prosecution under this section, a map produced or
8 reproduced by any municipal or county engineer for the purpose of
9 depicting the location and boundaries of the area on or within 1,000
10 feet of any property used for school purposes which is owned by or
11 leased to any elementary or secondary school or school board, or a
12 true copy of such a map, shall, upon proper authentication, be
13 admissible and shall constitute prima facie evidence of the location
14 and boundaries of those areas, provided that the governing body of
15 the municipality or county has adopted a resolution or ordinance
16 approving the map as official finding and record of the location and
17 boundaries of the area or areas on or within 1,000 feet of the school
18 property. Any map approved pursuant to this section may be
19 changed from time to time by the governing body of the
20 municipality or county. The original of every map approved or
21 revised pursuant to this section, or a true copy thereof, shall be filed
22 with the clerk of the municipality or county, and shall be
23 maintained as an official record of the municipality or county.
24 Nothing in this section shall be construed to preclude the
25 prosecution from introducing or relying upon any other evidence or
26 testimony to establish any element of this offense; nor shall this
27 section be construed to preclude the use or admissibility of any map
28 or diagram other than one which has been approved by the
29 governing body of a municipality or county, provided that the map
30 or diagram is otherwise admissible pursuant to the Rules of
31 Evidence.

32 (cf: P.L.1997, c.181, s.5).

33
34 ²2. (New section) Notwithstanding any court rule limiting the
35 time period within which a motion to reduce or change a sentence
36 may be filed, any person who, on the effective date of this act, is
37 serving a mandatory minimum sentence as provided by section 1 of
38 P.L.1987, c.101 (C.2C:35-7) and who has not had his sentence
39 suspended or been paroled or discharged may move to have his
40 sentence reviewed by the court. If the court finds that the sentence
41 under review does not serve the interests of justice, the judge may
42 re-sentence the defendant pursuant to subsection b. of section 1 of
43 P.L.1987, c.101 (C.2C:35-7). In determining whether the sentence
44 under review serves the interests of justice, the court shall consider
45 all relevant circumstances, including whether the defendant pleaded
46 guilty pursuant to a negotiated agreement, and whether the
47 prosecution has agreed to dismiss one or more charges which, upon
48 conviction, would have subjected the defendant to the presumption

1 of imprisonment under subsection d. of N.J.S.2C:44-1. The
2 determination by the court shall not be subject to appeal.²

3

4 ²[2] 3.² This act shall take effect immediately ²and also shall
5 apply to any case pending on the date of enactment².