

ASSEMBLY, No. 203

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblywoman ANNETTE CHAPARRO

District 33 (Hudson)

SYNOPSIS

Establishes a 500 foot drug free zone around child care centers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the distribution of controlled dangerous
2 substances and amending P.L.1987, c.101.

3

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

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

9 1. a. Any person who violates subsection a. of N.J.S.2C:35-5
10 by distributing, dispensing or possessing with intent to distribute a
11 controlled dangerous substance or controlled substance analog
12 while on any school property used for school purposes which is
13 owned by or leased to any elementary or secondary school or school
14 board, or within 1,000 feet of such school property or a school bus,
15 or while on any school bus, or on or within 500 feet of a child care
16 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.) is
17 guilty of a crime of the third degree and shall, except as provided in
18 N.J.S.2C:35-12, be sentenced by the court to a term of
19 imprisonment. Where the violation involves less than one ounce of
20 marijuana, the term of imprisonment shall include the imposition of
21 a minimum term which shall be fixed at, or between, one-third and
22 one-half of the sentence imposed, or one year, whichever is greater,
23 during which the defendant shall be ineligible for parole. In all
24 other cases, the term of imprisonment shall include the imposition
25 of a minimum term which shall be fixed at, or between, one-third
26 and one-half of the sentence imposed, or three years, whichever is
27 greater, during which the defendant shall be ineligible for parole.
28 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
29 fine of up to \$150,000 may also be imposed upon any conviction
30 for a violation of this section.

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

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

40 (b) the specific location of the present offense in relation to the
41 school property, or licensed child care center property, including
42 distance from the school, or the licensed child care center, 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.

1 (c) whether school , or the licensed child care center, was in
2 session at the time of the offense; and

3 (d) whether children were present at or in the immediate vicinity
4 of the location when the offense took place.

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

8 (a) the offense took place while on any school property used for
9 school purposes which is owned by or leased to any elementary or
10 secondary school or school board, or while on any school bus , or if
11 the offense took place while on any property owned or leased to any
12 licensed child care center; or

13 (b) the defendant in the course of committing the offense used
14 or threatened violence or was in possession of a firearm.

15 If the court at sentencing elects not to impose a minimum term of
16 imprisonment and parole ineligibility pursuant to this subsection,
17 imposes a term of parole ineligibility less than the minimum term
18 prescribed in subsection a. of this section, or places the defendant
19 on probation for a violation of subsection a. of this section, the
20 sentence shall not become final for 10 days in order to permit the
21 prosecution to appeal the court's finding and the sentence imposed.
22 The Attorney General shall develop guidelines to ensure the
23 uniform exercise of discretion in making determinations regarding
24 whether to appeal a decision to waive or reduce the minimum term
25 of parole ineligibility or place the defendant on probation.

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

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

38 d. It shall be no defense to a prosecution for a violation of this
39 section that the actor was unaware that the prohibited conduct took
40 place while on or within 1,000 feet of any school property, or on or
41 within 500 feet of a licensed child care center property. Nor shall it
42 be a defense to a prosecution under this section, or under any other
43 provision of this title, that no juveniles were present on the school
44 property, or licensed child care center property at the time of the
45 offense or that the school property, or licensed child care center,
46 was not in session.

47 e. It is an affirmative defense to prosecution for a violation of
48 this section that the prohibited conduct took place entirely within a

1 private residence, that no person 17 years of age or younger was
2 present in such private residence at any time during the commission
3 of the offense, and that the prohibited conduct did not involve
4 distributing, dispensing or possessing with the intent to distribute or
5 dispense any controlled dangerous substance or controlled
6 substance analog for profit. The affirmative defense established in
7 this section shall be proved by the defendant by a preponderance of
8 the evidence. Nothing herein shall be construed to establish an
9 affirmative defense with respect to a prosecution for an offense
10 defined in any other section of this chapter.

11 f. In a prosecution under this section, a map produced or
12 reproduced by any municipal or county engineer for the purpose of
13 depicting the location and boundaries of the area on or within 1,000
14 feet of any property used for school purposes which is owned by or
15 leased to any elementary or secondary school or school board, or on
16 or within 500 feet of any property owned or leased to any licensed
17 child care center, or a true copy of such a map, shall, upon proper
18 authentication, be admissible and shall constitute prima facie
19 evidence of the location and boundaries of those areas, provided
20 that the governing body of the municipality or county has adopted a
21 resolution or ordinance approving the map as official finding and
22 record of the location and boundaries of the area or areas on or
23 within 1,000 feet of the school property, or 500 feet of the licensed
24 child care center property. Any map approved pursuant to this
25 section may be changed from time to time by the governing body of
26 the municipality or county. The original of every map approved or
27 revised pursuant to this section, or a true copy thereof, shall be filed
28 with the clerk of the municipality or county, and shall be
29 maintained as an official record of the municipality or county.
30 Nothing in this section shall be construed to preclude the
31 prosecution from introducing or relying upon any other evidence or
32 testimony to establish any element of this offense; nor shall this
33 section be construed to preclude the use or admissibility of any map
34 or diagram other than one which has been approved by the
35 governing body of a municipality or county, provided that the map
36 or diagram is otherwise admissible pursuant to the Rules of
37 Evidence.

38 (cf: P.L.2009, c.192, s.1)

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40 2. This act shall take effect immediately.

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STATEMENT

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45 Under current law, it is a crime of the third degree for any person
46 to distribute, dispense, or possess with the intent to distribute a
47 controlled dangerous substance while on, or within 1,000 feet of, an
48 elementary or secondary school, school board, or school bus. In a

1 recent case, State v. Shelle the New Jersey Supreme Court decided
2 that child care centers, even those that operate small kindergarten
3 classes, are not considered schools for the purposes of the existing
4 drug free school zone law.

5 This bill would expand drug free school zones to include
6 property owned or leased by licensed child care centers and the 500
7 feet surrounding such a child care center. Child care centers
8 include day care centers, drop-in centers, nighttime centers,
9 recreation centers, day nurseries, nursery and play schools,
10 cooperative child centers, centers for children with special needs,
11 centers serving sick children, infant-toddler programs, school age
12 child care programs, employer supported centers, and kindergartens
13 that are not an integral part of a private educational institution.