

SENATE, No. 1195

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Clarifies that school bus for purpose of upgraded penalties in "school zone" criminal drug laws includes any bus owned and operated by board of education or by private contractor.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT creating certain drug offenses and amending
2 P.L.1987, c.101 and N.J.S.2C:35-10.

3

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

6

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, is guilty of a crime of the third degree
16 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
17 the court to a term of imprisonment. Where the violation involves
18 less than one ounce of marijuana, the term of imprisonment shall
19 include the imposition of a minimum term which shall be fixed at,
20 or between, one-third and one-half of the sentence imposed, or one
21 year, whichever is greater, during which the defendant shall be
22 ineligible for parole. In all other cases, the term of imprisonment
23 shall include the imposition of a minimum term which shall be
24 fixed at, or between, one-third and one-half of the sentence
25 imposed, or three years, whichever is greater, during which the
26 defendant shall be ineligible for parole. Notwithstanding the
27 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
28 \$150,000 may also be imposed upon any conviction for a violation
29 of this section.

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

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

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

43 (c) whether school was in session at the time of the offense; and

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

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

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

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

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

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

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

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

39 e. It is an affirmative defense to prosecution for a violation of
40 this section that the prohibited conduct took place entirely within a
41 private residence, that no person 17 years of age or younger was
42 present in such private residence at any time during the commission
43 of the offense, and that the prohibited conduct did not involve
44 distributing, dispensing or possessing with the intent to distribute or
45 dispense any controlled dangerous substance or controlled
46 substance analog for profit. The affirmative defense established in
47 this section shall be proved by the defendant by a preponderance of
48 the evidence. Nothing herein shall be construed to establish an

1 affirmative defense with respect to a prosecution for an offense
2 defined in any other section of this chapter.

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

28 g. As used in this section, "school bus" includes any bus owned
29 and operated by a board of education or owned and operated by a
30 private contractor for the purpose of transporting students to and
31 from a school or transporting students to and from school-related
32 activities, including, but not limited to, field trips, athletic events or
33 other school-sanctioned events.

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

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

37 2C:35-10. Possession, Use or Being Under the Influence, or
38 Failure to Make Lawful Disposition.

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

47 (1) A controlled dangerous substance, or its analog, classified in
48 Schedule I, II, III or IV other than those specifically covered in this

1 section, is guilty of a crime of the third degree except that,
2 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
3 fine of up to \$35,000.00 may be imposed;

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

8 (3) Possession of more than 50 grams of marijuana, including
9 any adulterants or dilutants, or more than five grams of hashish is
10 guilty of a crime of the fourth degree, except that, notwithstanding
11 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
12 \$25,000.00 may be imposed; or

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

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

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

28 In a prosecution under this subsection, it shall not be necessary
29 for the State to prove that the accused did use or was under the
30 influence of any specific drug, but it shall be sufficient for a
31 conviction under this subsection for the State to prove that the
32 accused did use or was under the influence of some controlled
33 dangerous substance, counterfeit controlled dangerous substance, or
34 controlled substance analog, by proving that the accused did
35 manifest physical and physiological symptoms or reactions caused
36 by the use of any controlled dangerous substance or controlled
37 substance analog.

38 c. Any person who knowingly obtains or possesses a controlled
39 dangerous substance or controlled substance analog in violation of
40 subsection a. of this section and who fails to voluntarily deliver the
41 substance to the nearest law enforcement officer is guilty of a
42 disorderly persons offense. Nothing in this subsection shall be
43 construed to preclude a prosecution or conviction for any other
44 offense defined in this title or any other statute.

45 As used in this section, "school bus" includes any bus owned and
46 operated by a board of education or owned and operated by a
47 private contractor for the purpose of transporting students to and
48 from a school or transporting students to and from school-related

1 activities, including, but not limited to, field trips, athletic events or
2 other school-sanctioned events.

3 (cf: P.L.1997, c.181, s.6)

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5 3. This act shall take effect immediately.

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STATEMENT

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10 This bill amends the "school zone" laws which upgrade criminal
11 penalties for selling or possessing controlled dangerous substances
12 while on or near school property and school buses. The bill adds
13 language to clarify that "school bus" includes any bus owned and
14 operated by a board of education or owned and operated by a
15 private contractor for the purpose of transporting students to and
16 from a school or transporting students to and from school-related
17 activities, including, but not limited to, field trips, athletic events or
18 other school-sanctioned events.

19 The sponsor was prompted to seek this clarification following an
20 incident in which a school bus driver in Hamilton was arrested for
21 smoking marijuana while driving a school bus on a field trip.