

ASSEMBLY, No. 4465

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED DECEMBER 5, 2005

Sponsored by:

Assemblywoman MARY T. PREVITE

District 6 (Camden)

Assemblyman PETER J. BARNES, JR.

District 18 (Middlesex)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

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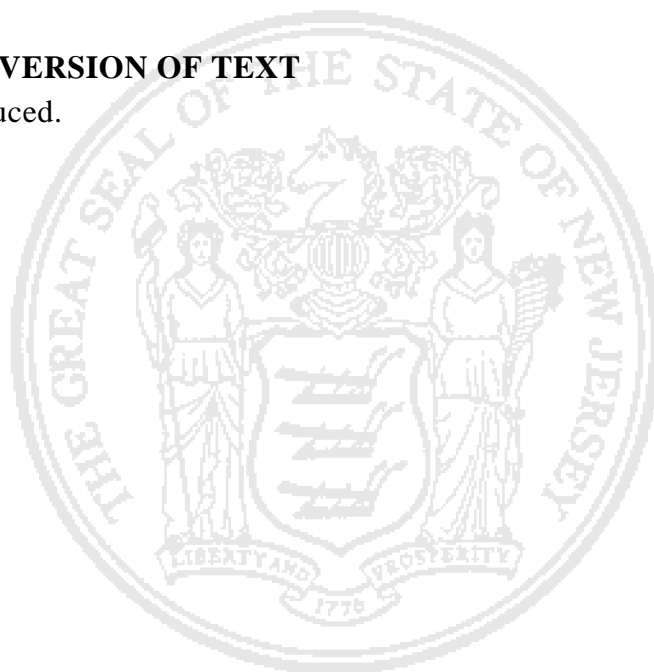
District 37 (Bergen)

SYNOPSIS

Reduces certain drug free zones from within 1,000 to 200 feet of school or public property.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/13/2005)

A4465 PREVITE, BARNES

2

1 AN ACT concerning distributing, dispensing or possessing controlled
2 dangerous substances in certain zones, supplementing chapter 35 of
3 Title 2C of the New Jersey Statutes, amending N.J.S.2C:35-10 and
4 N.J.S.2C:43-6 and repealing P.L.1987, c.101 and P.L.1997, c.327.

5

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

8

9 1. (New section) a. Any person who violates subsection a. of
10 N.J.S.2C:35-5 by distributing, dispensing or possessing with intent to
11 distribute a controlled dangerous substance or controlled substance
12 analog while on or within 200 feet of any school property or any
13 school bus, or on or within 200 feet of real property comprising a
14 public housing facility or a public park or a public building, is guilty of
15 a crime of the second degree. Where the violation involves less than
16 one ounce of marijuana or a violation of paragraph (14) of subsection
17 b. of N.J.S.2C:35-5, the person is guilty of a crime of the third degree.

18 b. It shall be no defense to a prosecution for a violation of this
19 section that the actor was unaware that the prohibited conduct took
20 place while on or within 200 feet of school property, or on or within
21 200 feet of a public housing facility or a public park or a public
22 building. Nor shall it be a defense to a prosecution under this section
23 that no juveniles were present at the time of the offense. Nor shall it
24 be a defense, if the offense was on or within 200 feet of school
25 property, that the school was not in session.

26 c. (1) If the prohibited conduct occurred on or within 200 feet of
27 school property, it is an affirmative defense that the prohibited conduct
28 took place entirely within a private residence, that no person 17 years
29 of age or younger was present in such private residence at any time
30 during the commission of the offense, and that the prohibited conduct
31 did not involve distributing, dispensing or possessing with the intent
32 to distribute or dispense any controlled dangerous substance or
33 controlled substance analog for profit.

34 (2) If the prohibited conduct occurred on or within 200 feet of real
35 property comprising a public housing facility or a public park or a
36 public building, it is an affirmative defense that the prohibited conduct
37 did not involve distributing, dispensing or possessing with the intent
38 to distribute or dispense any controlled dangerous substance or
39 controlled substance analog for profit, and that the prohibited conduct
40 did not involve distribution to a person 17 years of age or younger.

41 (3) The affirmative defenses established in subsection (1) and (2)
42 of section c. shall be proved by the defendant by a preponderance of
43 the evidence. Nothing herein shall be construed to establish an

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

3 d. In a prosecution under this section, a map produced or
4 reproduced by any municipal or county engineer, or a true copy of
5 such a map, for the purpose of depicting the location and boundaries
6 of the area on or within 200 feet of school property used for school
7 purposes, or the area on or within 200 feet of a public housing facility
8 or a public park or a public building, shall, upon proper authentication,
9 be admissible and shall constitute prima facie evidence of the location
10 and boundaries of those areas, provided that the governing body of the
11 municipality or county has adopted a resolution or ordinance
12 approving the map as an official finding and record of the location and
13 boundaries of the area or areas of such property. Any map approved
14 pursuant to this section may be changed from time to time by the
15 governing body of the municipality or county. The original of every
16 map approved or revised pursuant to this section, or a true copy
17 thereof, shall be filed with the clerk of the municipality or county, and
18 shall be maintained as an official record of the municipality or county.
19 A true copy of every map approved or revised pursuant to this section
20 also shall be filed with the Attorney General. Nothing in this section
21 shall be construed to preclude the prosecution from introducing or
22 relying upon any other evidence or testimony to establish any element
23 of this offense; nor shall this section be construed to preclude the use
24 or admissibility of any map or diagram other than one which has been
25 approved by the governing body of a municipality or county, provided
26 that the map or diagram is otherwise admissible pursuant to the Rules
27 of Evidence.

28 e. An extended term of imprisonment pursuant to subsection f. of
29 N.J.S.2C:43-6 shall not apply to a conviction under this section.

30 f. As used in this section:

31 "Public housing facility" means any dwelling, complex of dwellings,
32 accommodation, building, structure or facility and real property of any
33 nature appurtenant thereto and used in connection therewith, which is
34 owned by or leased to a local housing authority in accordance with the
35 "Local Redevelopment and Housing Law," P.L.1992, c.79
36 (C.40A:12A-1 et seq.) for the purpose of providing living
37 accommodations to persons of low income.

38 "Public park" means a park, recreation facility or area or
39 playground owned or controlled by a State, county or local
40 government unit.

41 "Public building" means any publicly owned or leased library or
42 museum.

43 "School property" means any property owned by or leased to any
44 elementary or secondary school or school board used for school
45 purposes.

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

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

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

12 (1) A controlled dangerous substance, or its analog, classified in
13 Schedule I, II, III or IV other than those specifically covered in this
14 section, is guilty of a crime of the third degree except that,
15 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
16 fine of up to \$35,000.00 may be imposed;

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

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

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

29 Any person who commits any offense defined in this section while
30 on any property used for school purposes which is owned by or leased
31 to any elementary or secondary school or school board, or within
32 [1,000] 200 feet of any such school property or a school bus, or while
33 on any school bus, and who is not sentenced to a term of
34 imprisonment, shall, in addition to any other sentence which the court
35 may impose, be required to perform not less than 100 hours of
36 community service.

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

41 In a prosecution under this subsection, it shall not be necessary for
42 the State to prove that the accused did use or was under the influence
43 of any specific drug, but it shall be sufficient for a conviction under
44 this subsection for the State to prove that the accused did use or was
45 under the influence of some controlled dangerous substance,
46 counterfeit controlled dangerous substance, or controlled substance

1 analog, by proving that the accused did manifest physical and
2 physiological symptoms or reactions caused by the use of any
3 controlled dangerous substance or controlled substance analog.

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

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

12
13 3. N.J.S.2C:43-6 is amended to read as follows:

14 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms;
15 Mandatory Terms.

16 a. Except as otherwise provided, a person who has been convicted
17 of a crime may be sentenced to imprisonment, as follows:

18 (1) In the case of a crime of the first degree, for a specific term of
19 years which shall be fixed by the court and shall be between 10 years
20 and 20 years;

21 (2) In the case of a crime of the second degree, for a specific term
22 of years which shall be fixed by the court and shall be between five
23 years and 10 years;

24 (3) In the case of a crime of the third degree, for a specific term of
25 years which shall be fixed by the court and shall be between three
26 years and five years;

27 (4) In the case of a crime of the fourth degree, for a specific term
28 which shall be fixed by the court and shall not exceed 18 months.

29 b. As part of a sentence for any crime, where the court is clearly
30 convinced that the aggravating factors substantially outweigh the
31 mitigating factors, as set forth in subsections a. and b. of 2C:44-1, the
32 court may fix a minimum term not to exceed one-half of the term set
33 pursuant to subsection a., or one-half of the term set pursuant to a
34 maximum period of incarceration for a crime set forth in any statute
35 other than this code, during which the defendant shall not be eligible
36 for parole; provided that no defendant shall be eligible for parole at a
37 date earlier than otherwise provided by the law governing parole.

38 c. A person who has been convicted under 2C:39-4a. of possession
39 of a firearm with intent to use it against the person of another, or of
40 a crime under any of the following sections: 2C:11-3, 2C:11-4,
41 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2,
42 2C:29-5, who, while in the course of committing or attempting to
43 commit the crime, including the immediate flight therefrom, used or
44 was in possession of a firearm as defined in 2C:39-1f., shall be
45 sentenced to a term of imprisonment by the court. The term of
46 imprisonment shall include the imposition of a minimum term. The

1 minimum term shall be fixed at, or between, one-third and one-half of
2 the sentence imposed by the court or three years, whichever is greater,
3 or 18 months in the case of a fourth degree crime, during which the
4 defendant shall be ineligible for parole.

5 The minimum terms established by this section shall not prevent the
6 court from imposing presumptive terms of imprisonment pursuant to
7 2C:44-1f. (1) except in cases of crimes of the fourth degree.

8 A person who has been convicted of an offense enumerated by this
9 subsection and who used or possessed a firearm during its commission,
10 attempted commission or flight therefrom and who has been previously
11 convicted of an offense involving the use or possession of a firearm as
12 defined in 2C:44-3d., shall be sentenced by the court to an extended
13 term as authorized by 2C:43-7c., notwithstanding that extended terms
14 are ordinarily discretionary with the court.

15 d. The court shall not impose a mandatory sentence pursuant to
16 subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the
17 ground therefor has been established at a hearing. At the hearing,
18 which may occur at the time of sentencing, the prosecutor shall
19 establish by a preponderance of the evidence that the weapon used or
20 possessed was a firearm. In making its finding, the court shall take
21 judicial notice of any evidence, testimony or information adduced at
22 the trial, plea hearing, or other court proceedings and shall also
23 consider the presentence report and any other relevant information.

24 e. A person convicted of a third or subsequent offense involving
25 State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any other provision
26 of this code, or under any of the provisions of Title 54 of the Revised
27 Statutes, or Title 54A of the New Jersey Statutes, as amended and
28 supplemented, shall be sentenced to a term of imprisonment by the
29 court. This shall not preclude an application for and imposition of an
30 extended term of imprisonment under N.J.S.2C:44-3 if the provisions
31 of that section are applicable to the offender.

32 f. A person convicted of manufacturing, distributing, dispensing or
33 possessing with intent to distribute any dangerous substance or
34 controlled substance analog under N.J.S.2C:35-5, of maintaining or
35 operating a controlled dangerous substance production facility under
36 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
37 under N.J.S.2C:35-6, or leader of a narcotics trafficking network
38 under N.J.S.2C:35-3[, or of distributing, dispensing or possessing
39 with intent to distribute on or near school property or buses under
40 section 1 of P.L.1987, c.101 (C.2C:35-7)], who has been previously
41 convicted of manufacturing, distributing, dispensing or possessing with
42 intent to distribute a controlled dangerous substance or controlled
43 substance analog, shall upon application of the prosecuting attorney
44 be sentenced by the court to an extended term as authorized by
45 subsection c. of N.J.S.2C:43-7, notwithstanding that extended terms
46 are ordinarily discretionary with the court. The term of imprisonment

1 shall, except as may be provided in N.J.S.2C:35-12, include the
2 imposition of a minimum term. The minimum term shall be fixed at,
3 or between, one-third and one-half of the sentence imposed by the
4 court or three years, whichever is greater, not less than seven years if
5 the person is convicted of a violation of N.J.S.2C:35-6, or 18 months
6 in the case of a fourth degree crime, during which the defendant shall
7 be ineligible for parole.

8 The court shall not impose an extended term pursuant to this
9 subsection unless the ground therefor has been established at a
10 hearing. At the hearing, which may occur at the time of sentencing, the
11 prosecutor shall establish the ground therefor by a preponderance of
12 the evidence. In making its finding, the court shall take judicial notice
13 of any evidence, testimony or information adduced at the trial, plea
14 hearing, or other court proceedings and shall also consider the
15 presentence report and any other relevant information.

16 For the purpose of this subsection, a previous conviction exists
17 where the actor has at any time been convicted under chapter 35 of
18 this title or Title 24 of the Revised Statutes or under any similar
19 statute of the United States, this State, or any other state for an
20 offense that is substantially equivalent to N.J.S.2C:35-3,
21 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of
22 P.L.1987, c.101 (C.2C:35-7).

23 g. Any person who has been convicted under subsection a. of
24 N.J.S.2C:39-4 of possessing a machine gun or assault firearm with
25 intent to use it against the person of another, or of a crime under any
26 of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4,
27 N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a.,
28 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5, who,
29 while in the course of committing or attempting to commit the crime,
30 including the immediate flight therefrom, used or was in possession of
31 a machine gun or assault firearm shall be sentenced to a term of
32 imprisonment by the court. The term of imprisonment shall include the
33 imposition of a minimum term. The minimum term shall be fixed at 10
34 years for a crime of the first or second degree, five years for a crime
35 of the third degree, or 18 months in the case of a fourth degree crime,
36 during which the defendant shall be ineligible for parole.

37 The minimum terms established by this section shall not prevent the
38 court from imposing presumptive terms of imprisonment pursuant to
39 paragraph (1) of subsection f. of N.J.S.2C:44-1 for crimes of the first
40 degree.

41 A person who has been convicted of an offense enumerated in this
42 subsection and who used or possessed a machine gun or assault
43 firearm during its commission, attempted commission or flight
44 therefrom and who has been previously convicted of an offense
45 involving the use or possession of any firearm as defined in subsection
46 d. of N.J.S.2C:44-3, shall be sentenced by the court to an extended

1 term as authorized by subsection d. of N.J.S.2C:43-7, notwithstanding
2 that extended terms are ordinarily discretionary with the court.

3 h. The court shall not impose a mandatory sentence pursuant to
4 subsection g. of this section, subsections d. of N.J.S.2C:43-7 or
5 N.J.S.2C:44-3, unless the ground therefor has been established at a
6 hearing. At the hearing, which may occur at the time of sentencing, the
7 prosecutor shall establish by a preponderance of the evidence that the
8 weapon used or possessed was a machine gun or assault firearm. In
9 making its finding, the court shall take judicial notice of any evidence,
10 testimony or information adduced at the trial, plea hearing, or other
11 court proceedings and shall also consider the presentence report and
12 any other relevant information.

13 i. A person who has been convicted under paragraph (6) of
14 subsection b. of 2C:12-1 of causing bodily injury while eluding shall
15 be sentenced to a term of imprisonment by the court. The term of
16 imprisonment shall include the imposition of a minimum term. The
17 minimum term shall be fixed at, or between one-third and one-half of
18 the sentence imposed by the court. The minimum term established by
19 this subsection shall not prevent the court from imposing a
20 presumptive term of imprisonment pursuant to paragraph (1) of
21 subsection f. of 2C:44-1.

22 (cf: P.L.1993, c.219, s.6)

23

24 4. P.L.1987, c.101 (C.2C:35-7) and P.L.1997, c.327 (C.2C:35-7.1)
25 are repealed.

26

27 5. This act shall take effect on the first day of the seventh month
28 following enactment.

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30

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STATEMENT

32

33 This bill would reduce drug free "school zones" and drug free
34 "public property" zones from within 1,000 feet of the property to
35 within 200 feet. Under current law, persons who commit drug
36 offenses within these drug free zones are subject to enhanced
37 penalties.

38 Specifically, the bill repeals the current law establishing a 1,000
39 foot drug free school zone, P.L.1987, c.101 (C.2C:35-7), and drug
40 free public property zone, P.L.1997, c.327 (C.2C:35-7.1). Under the
41 bill, these laws would be consolidated to prohibit distributing,
42 dispensing or possessing with intent to distribute a controlled
43 dangerous substance (CDS) on or within 200 feet of school property
44 or a school bus, as well as on or within 200 feet of public housing
45 facilities, public parks and libraries and museums.

46 Under current law, a violation of the drug free school zone law

1 constitutes a crime of the third degree, which is generally punishable
2 by a term of imprisonment of three-five years and a fine of up to
3 \$15,000. The current drug free school zone law requires the
4 imposition of a mandatory minimum term of incarceration of one-third
5 to one-half of the sentence, or three years, whichever is greater, for all
6 CDS crimes other than those involving less than one ounce of
7 marijuana, as well as a fine of up to \$150,000. The bill would
8 eliminate the mandatory minimum term of incarceration of at least
9 three years but upgrade these CDS crimes to crimes of the second
10 degree. Second degree crimes are punishable by a term of
11 imprisonment of five-to-10 years, a fine of up to \$150,000, or both.

12 The bill also eliminates the drug free school zone mandatory
13 minimum of one year for CDS crimes involving less than one ounce of
14 marijuana, but this crime, as well as crimes involving a CDS listed on
15 Schedule V, would constitute a crime of the third degree. A Schedule
16 V CDS has low potential for abuse relative to a CDS listed in
17 Schedules I, II, III and IV; has a currently acceptable medical use; and
18 has limited potential for dependence relative to a CDS listed in the
19 other schedules.

20 The new consolidated law established by the bill specifies that a
21 person convicted under the law would not be subject to an extended
22 term of imprisonment. Under current law, a person who has been
23 convicted of a CDS crime and is subsequently convicted of a violation
24 of the drug free school zone is subject to an extended term of
25 imprisonment under N.J.S.2C:43-6.

26 Provisions in the current law prohibiting the merger of a conviction
27 for unlawfully manufacturing, distributing or dispensing a CDS under
28 N.J.S.2C:35-5, or employing a juvenile in a drug distribution scheme
29 under N.J.S.2C:35-6, with a drug free school zone or public property
30 zone are not included in this new consolidated law.

31 Due to the high concentration of schools, school buses, public
32 housing facilities, public parks and libraries and museums in urban
33 areas, drug free school and public property zones often cover most of
34 the geographical area of a city. This results in a disproportionate
35 number of urban residents being subject to the harsher penalties
36 imposed for drug offenses committed in school and public property
37 zones as compared to suburban and rural residents. This bill would
38 address this problem by reducing the size of drug free school and
39 public property zones.