

CHAPTER 192

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

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

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

C.2C:35-7 Distribution on or within 1,000 feet of school property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.2C:35-7a Review of sentence by court.

2. Notwithstanding any court rule limiting the time period within which a motion to reduce or change a sentence may be filed, any person who, on the effective date of this act, is

serving a mandatory minimum sentence as provided by section 1 of P.L.1987, c.101 (C.2C:35-7) and who has not had his sentence suspended or been paroled or discharged may move to have his sentence reviewed by the court. If the court finds that the sentence under review does not serve the interests of justice, the judge may re-sentence the defendant pursuant to subsection b. of section 1 of P.L.1987, c.101 (C.2C:35-7). In determining whether the sentence under review serves the interests of justice, the court shall consider all relevant circumstances, including whether the defendant pleaded guilty pursuant to a negotiated agreement, and whether the prosecution has agreed to dismiss one or more charges which, upon conviction, would have subjected the defendant to the presumption of imprisonment under subsection d. of N.J.S.2C:44-1. The determination by the court shall not be subject to appeal.

3. This act shall take effect immediately and also shall apply to any case pending on the date of enactment.

Approved January 12, 2010.