

**SENATE, No. 278**

**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

**Sponsored by:**

**Senator BERNARD F. KENNY, JR.**

**District 33 (Hudson)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



S278 KENNY

2

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

6

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

9

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

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

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

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

44 (3) The affirmative defenses established in subsection (1) and  
45 (2) of section c. shall be proved by the defendant by a

**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 preponderance of the evidence. Nothing herein shall be construed  
2 to establish an affirmative defense with respect to a prosecution for  
3 an offense defined in any other section of this chapter.

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

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

32 f. As used in this section:

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

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

43 "Public building" means any publicly owned or leased library or  
44 museum.

45 "School property" means any property owned by or leased to any  
46 elementary or secondary school or school board used for school  
47 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  
5 obtain, or to possess, actually or constructively, a controlled  
6 dangerous substance or controlled substance analog, unless the  
7 substance was obtained directly, or pursuant to a valid prescription  
8 or order form from a practitioner, while acting in the course of his  
9 professional practice, or except as otherwise authorized by  
10 P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this  
11 section with respect 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  
18 in 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  
22 any adulterants or dilutants, or more than five grams of hashish is  
23 guilty of a crime of the fourth degree, except that, notwithstanding  
24 the 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  
28 disorderly person.

29       Any person who commits any offense defined in this section  
30 while on any property used for school purposes which is owned by  
31 or leased to any elementary or secondary school or school board, or  
32 within [1,000] 200 feet of any such school property or a school bus,  
33 or while on any school bus, and who is not sentenced to a term of  
34 imprisonment, shall, in addition to any other sentence which the  
35 court 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  
39 than 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  
42 for the State to prove that the accused did use or was under the  
43 influence of any specific drug, but it shall be sufficient for a  
44 conviction under this subsection for the State to prove that the  
45 accused did use or was under the influence of some controlled  
46 dangerous substance, counterfeit controlled dangerous substance, or  
47 controlled substance analog, by proving that the accused did

1 manifest physical and physiological symptoms or reactions caused  
2 by the use of any controlled dangerous substance or controlled  
3 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  
17 convicted 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  
19 of years which shall be fixed by the court and shall be between 10  
20 years and 20 years;

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

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

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

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

40 c. A person who has been convicted under 2C:39-4a. of  
41 possession of a firearm with intent to use it against the person of  
42 another, or of a crime under any of the following sections: 2C:11-3,  
43 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1,  
44 2C:18-2, 2C:29-5, who, while in the course of committing or  
45 attempting to commit the crime, including the immediate flight  
46 therefrom, used or was in possession of a firearm as defined in  
47 2C:39-1f., shall be sentenced to a term of imprisonment by the  
48 court. The term of imprisonment shall include the imposition of a

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

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

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

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

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

37 f. A person convicted of manufacturing, distributing, dispensing  
38 or possessing with intent to distribute any dangerous substance or  
39 controlled substance analog under N.J.S.2C:35-5, of maintaining or  
40 operating a controlled dangerous substance production facility  
41 under N.J.S.2C:35-4, of employing a juvenile in a drug distribution  
42 scheme under N.J.S.2C:35-6, or leader of a narcotics trafficking  
43 network under N.J.S.2C:35-3[, or of distributing, dispensing or  
44 possessing with intent to distribute on or near school property or  
45 buses under section 1 of P.L.1987, c.101 (C.2C:35-7)], who has  
46 been previously convicted of manufacturing, distributing,  
47 dispensing or possessing with intent to distribute a controlled

1 dangerous substance or controlled substance analog, shall upon  
2 application of the prosecuting attorney be sentenced by the court to  
3 an extended term as authorized by subsection c. of N.J.S.2C:43-7,  
4 notwithstanding that extended terms are ordinarily discretionary  
5 with the court. The term of imprisonment shall, except as may be  
6 provided in N.J.S.2C:35-12, include the imposition of a minimum  
7 term. The minimum term shall be fixed at, or between, one-third  
8 and one-half of the sentence imposed by the court or three years,  
9 whichever is greater, not less than seven years if the person is  
10 convicted of a violation of N.J.S.2C:35-6, or 18 months in the case  
11 of a fourth degree crime, during which the defendant shall be  
12 ineligible for parole.

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

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

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

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

48 A person who has been convicted of an offense enumerated in

1 this subsection and who used or possessed a machine gun or assault  
2 firearm during its commission, attempted commission or flight  
3 therefrom and who has been previously convicted of an offense  
4 involving the use or possession of any firearm as defined in  
5 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an  
6 extended term as authorized by subsection d. of N.J.S.2C:43-7,  
7 notwithstanding that extended terms are ordinarily discretionary  
8 with the court.

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

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

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

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30 4. P.L.1987, c.101 (C.2C:35-7) and P.L.1997, c.327 (C.2C:35-  
31 7.1) are repealed.

32

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

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#### STATEMENT

38

39 This bill would reduce drug free "school zones" and drug free  
40 "public property" zones from within 1,000 feet of the property to  
41 within 200 feet. Under current law, persons who commit drug  
42 offenses within these drug free zones are subject to enhanced  
43 penalties.

44 Specifically, the bill repeals the current law establishing a 1,000  
45 foot drug free school zone, P.L.1987, c.101 (C.2C:35-7), and drug  
46 free public property zone, P.L.1997, c.327 (C.2C:35-7.1). Under  
47 the bill, these laws would be consolidated to prohibit distributing,  
48 dispensing or possessing with intent to distribute a controlled

1 dangerous substance (CDS) on or within 200 feet of school property  
2 or a school bus, as well as on or within 200 feet of public housing  
3 facilities, public parks and libraries and museums.

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

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

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

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

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