S T A T E O F N E W Y O R K

5175

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing the penalties for sale of controlled substances on park grounds or playgrounds

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 220.00 of the penal law is amended by adding a new subdivision 14-a to read as follows:

14-A. "PARK GROUNDS OR PLAYGROUNDS" MEANS IN OR WITHIN ANY BUILDING, STRUCTURE, PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE BOUNDARY OF LAND OWNED, LEASED OR MAINTAINED BY THE STATE OR ANY AGENCY OR MUNICIPALITY THEREOF OR BY ANY NOT-FOR-PROFIT CORPORATION OR ELEEMOSYNARY INSTITUTION, CORPORATION OR ASSOCIATION WHICH IS USED ON A REGULAR BASIS AS A RECREATION AREA AND IS SO DESIGNATED. FOR PURPOSES OF THIS DEFINITION, THE TERM "PARK GROUNDS OR PLAYGROUNDS" ALSO MEANS AND INCLUDES THE FOLLOWING WHICH HAS THE SAME OWNERSHIP AS THE PARK GROUND OR PLAYGROUND: ANY PARKING LOT, PARKING GARAGE, OR OTHER PARKING FACILITY, MARINA, BOAT LAUNCH OR OTHER SIMILAR FACILITY WHICH IS WITHIN ONE THOUSAND FEET OF AND SERVES SUCH PARK GROUNDS OR PLAYGROUNDS AND WHICH IS SO DESIGNATED BY EASILY VISABLE SIGNAGE AS SERVING SUCH PARK GROUNDS OR PLAYGROUNDS.

S 2. Section 220.34 of the penal law, as amended by chapter 280 of the laws of 1986, subdivisions 2 and 4 as amended by chapter 75 of the laws of 1995, subdivision 3 as amended by chapter 537 of the laws of 1998, subdivision 6-a as added by chapter 635 of the laws of 1997, subdivision 7 as amended by chapter 436 of the laws of 2006 and subdivision 8 as amended and subdivision 9 as added by chapter 264 of the laws of 2003, is amended to read as follows:

S 220.34 Criminal sale of a controlled substance in the fourth degree.

A person is guilty of criminal sale of a controlled substance in the fourth degree when he OR SHE knowingly and unlawfully sells:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD06212-01-9

1. a narcotic preparation; or
2. a dangerous depressant or a depressant and the dangerous depressant weighs ten ounces or more, or the depressant weighs two pounds or more; or
3. concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; or
4. phencyclidine and the phencyclidine weighs fifty milligrams or more; or
5. methadone; or
6. any amount of phencyclidine and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or
6-a. ketamine and said ketamine weighs four thousand milligrams or more[.]; OR
7. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon school grounds or on a school bus; or
8. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon the grounds of a child day care or educational facility, PARK GROUNDS OR PLAYGROUNDS under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds. As used in this subdivision, the phrase "the grounds of a child day care or educational facility" shall have the same meaning as provided for in subdivision five of section 220.44 of this article, AND "PARK GROUNDS OR PLAYGROUNDS" SHALL HAVE THE SAME MEANING AS PROVIDED FOR IN SUBDIVISION FOURTEEN-A OF SECTION 220.00 OF THIS ARTICLE. For the purposes of this subdivision, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility, PARK GROUNDS OR PLAYGROUNDS when notice is conspicuously posted of the presence or proximity of such facility; or
9. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more.

Criminal sale of a controlled substance in the fourth degree is a class C felony.

S 3. Section 220.44 of the penal law, as amended by chapter 289 of the laws of 1998 and subdivisions 1 and 2 as amended by chapter 436 of the laws of 2006, is amended to read as follows:

S 220.44 Criminal sale of a controlled substance in or near school grounds, PARK GROUNDS OR PLAYGROUNDS.

A person is guilty of criminal sale of a controlled substance in or near school grounds, PARK GROUNDS OR PLAYGROUNDS when he OR SHE knowingly and unlawfully sells:

1. a controlled substance in violation of any one of subdivisions one through six-a of section 220.34 of this article, when such sale takes place upon school grounds or on a school bus; or
2. a controlled substance in violation of any one of subdivisions one through eight of section 220.39 of this article, when such sale takes place upon school grounds or on a school bus; or
3. a controlled substance in violation of any one of subdivisions one through [six] SIX-A of section 220.34 of this article, when such sale takes place upon the grounds of a child day care or educational facility, PARK GROUNDS OR PLAYGROUNDS under circumstances evincing know-

ledge by the defendant that such sale is taking place upon such grounds; or

4. a controlled substance in violation of any one of subdivisions one through eight of section 220.39 of this article, when such sale takes place upon the grounds of a child day care or educational facility, PARK GROUNDS OR PLAYGROUNDS under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds.

5. For purposes of subdivisions three and four of this section, "the grounds of a child day care or educational facility" means (a) in or on or within any building, structure, athletic playing field, a playground or land contained within the real property boundary line of a public or private child day care center as such term is defined in paragraph (c) of subdivision one of section three hundred ninety of the social services law, or nursery, pre-kindergarten or kindergarten, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such facility or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such facility. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants. FOR THE PURPOSES OF THIS SECTION "PARK GROUNDS OR PLAYGROUNDS" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION FOURTEEN-A OF SECTION 220.00 OF THIS ARTICLE.

6. For the purposes of this section, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility, PARK GROUNDS OR PLAYGROUNDS when notice is conspicuously posted of the presence or proximity of such facility.

Criminal sale of a controlled substance in or near school grounds, PARK GROUNDS OR PLAYGROUNDS is a class B felony.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.