

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 220.00 of the penal law is amended by adding a new
2 subdivision 14-a to read as follows:
3 14-A. "PARK GROUNDS OR PLAYGROUNDS" MEANS IN OR WITHIN ANY BUILDING,
4 STRUCTURE, PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE BOUND-
5 ARY OF LAND OWNED, LEASED OR MAINTAINED BY THE STATE OR ANY AGENCY OR
6 MUNICIPALITY THEREOF OR BY ANY NOT-FOR-PROFIT CORPORATION OR ELEEMOSY-
7 NARY INSTITUTION, CORPORATION OR ASSOCIATION WHICH IS USED ON A REGULAR
8 BASIS AS A RECREATION AREA AND IS SO DESIGNATED. FOR PURPOSES OF THIS
9 DEFINITION, THE TERM "PARK GROUNDS OR PLAYGROUNDS" ALSO MEANS AND
10 INCLUDES THE FOLLOWING WHICH HAS THE SAME OWNERSHIP AS THE PARK GROUND
11 OR PLAYGROUND: ANY PARKING LOT, PARKING GARAGE, OR OTHER PARKING FACIL-
12 ITY, MARINA, BOAT LAUNCH OR OTHER SIMILAR FACILITY WHICH IS WITHIN ONE
13 THOUSAND FEET OF AND SERVES SUCH PARK GROUNDS OR PLAYGROUNDS AND WHICH
14 IS SO DESIGNATED BY EASILY VISABLE SIGNAGE AS SERVING SUCH PARK GROUNDS
15 OR PLAYGROUNDS.
16 S 2. Section 220.34 of the penal law, as amended by chapter 280 of
17 the laws of 1986, subdivisions 2 and 4 as amended by chapter 75 of the
18 laws of 1995, subdivision 3 as amended by chapter 537 of the laws of
19 1998, subdivision 6-a as added by chapter 635 of the laws of 1997,
20 subdivision 7 as amended by chapter 436 of the laws of 2006 and subdivi-
21 sion 8 as amended and subdivision 9 as added by chapter 264 of the laws
22 of 2003, is amended to read as follows:
23 S 220.34 Criminal sale of a controlled substance in the fourth degree.
24 A person is guilty of criminal sale of a controlled substance in the
25 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.

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1 1. a narcotic preparation; or
2 2. a dangerous depressant or a depressant and the dangerous depressant
3 weighs ten ounces or more, or the depressant weighs two pounds or more;
4 or
5 3. concentrated cannabis as defined in paragraph (a) of subdivision
6 four of section thirty-three hundred two of the public health law; or
7 4. phencyclidine and the phencyclidine weighs fifty milligrams or
8 more; or
9 5. methadone; or
10 6. any amount of phencyclidine and has previously been convicted of an
11 offense defined in this article or the attempt or conspiracy to commit
12 any such offense; or
13 6-a. ketamine and said ketamine weighs four thousand milligrams or
14 more[.]; OR
15 7. a controlled substance in violation of section 220.31 of this arti-
16 cle, when such sale takes place upon school grounds or on a school bus;
17 or
18 8. a controlled substance in violation of section 220.31 of this arti-
19 cle, when such sale takes place upon the grounds of a child day care or
20 educational facility, PARK GROUNDS OR PLAYGROUNDS under circumstances
21 evincing knowledge by the defendant that such sale is taking place upon
22 such grounds. As used in this subdivision, the phrase "the grounds of a
23 child day care or educational facility" shall have the same meaning as
24 provided for in subdivision five of section 220.44 of this article, AND
25 "PARK GROUNDS OR PLAYGROUNDS" SHALL HAVE THE SAME MEANING AS PROVIDED
26 FOR IN SUBDIVISION FOURTEEN-A OF SECTION 220.00 OF THIS ARTICLE. For
27 the purposes of this subdivision, a rebuttable presumption shall be
28 established that a person has knowledge that they are within the grounds
29 of a child day care or educational facility, PARK GROUNDS OR PLAYGROUNDS
30 when notice is conspicuously posted of the presence or proximity of such
31 facility; or
32 9. one or more preparations, compounds, mixtures or substances
33 containing gamma hydroxybutyric acid, as defined in paragraph four of
34 subdivision (e) of schedule I of section thirty-three hundred six of the
35 public health law, and said preparations, compounds, mixtures or
36 substances are of an aggregate weight of twenty-eight grams or more.
37 Criminal sale of a controlled substance in the fourth degree is a
38 class C felony.
39 S 3. Section 220.44 of the penal law, as amended by chapter 289 of the
40 laws of 1998 and subdivisions 1 and 2 as amended by chapter 436 of the
41 laws of 2006, is amended to read as follows:
42 S 220.44 Criminal sale of a controlled substance in or near school
43 grounds, PARK GROUNDS OR PLAYGROUNDS.
44 A person is guilty of criminal sale of a controlled substance in or
45 near school grounds, PARK GROUNDS OR PLAYGROUNDS when he OR SHE knowing-
46 ly and unlawfully sells:
47 1. a controlled substance in violation of any one of subdivisions one
48 through six-a of section 220.34 of this article, when such sale takes
49 place upon school grounds or on a school bus; or
50 2. a controlled substance in violation of any one of subdivisions one
51 through eight of section 220.39 of this article, when such sale takes
52 place upon school grounds or on a school bus; or
53 3. a controlled substance in violation of any one of subdivisions one
54 through [six] SIX-A of section 220.34 of this article, when such sale
55 takes place upon the grounds of a child day care or educational
56 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.