

1568

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sens. GOLDEN, ALESİ, BONACIC, FARLEY, FUSCHILLO, GRIFFO, HANNON, O. JOHNSON, MAZIARZ, MORAHAN, SALAND, SEWARD, VOLKER -- read twice and ordered printed, and when printed to be committed 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:

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 ELEMOSY-
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.

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

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

3 1. a narcotic preparation; or

4 2. a dangerous depressant or a depressant and the dangerous depressant
5 weighs ten ounces or more, or the depressant weighs two pounds or more;
6 or

7 3. concentrated cannabis as defined in paragraph (a) of subdivision
8 four of section thirty-three hundred two of the public health law; or

9 4. phencyclidine and the phencyclidine weighs fifty milligrams or
10 more; or

11 5. methadone; or

12 6. any amount of phencyclidine and has previously been convicted of an
13 offense defined in this article or the attempt or conspiracy to commit
14 any such offense; or

15 6-a. ketamine and said ketamine weighs four thousand milligrams or
16 more[.]; OR

17 7. a controlled substance in violation of section 220.31 of this arti-
18 cle, when such sale takes place upon school grounds or on a school bus;
19 or

20 8. a controlled substance in violation of section 220.31 of this arti-
21 cle, when such sale takes place upon the grounds of a child day care or
22 educational facility, PARK GROUNDS OR PLAYGROUNDS under circumstances
23 evincing knowledge by the defendant that such sale is taking place upon
24 such grounds. As used in this subdivision, the phrase "the grounds of a
25 child day care or educational facility" shall have the same meaning as
26 provided for in subdivision five of section 220.44 of this article, AND
27 "PARK GROUNDS OR PLAYGROUNDS" SHALL HAVE THE SAME MEANING AS PROVIDED
28 FOR IN SUBDIVISION FOURTEEN-A OF SECTION 220.00 OF THIS ARTICLE. For
29 the purposes of this subdivision, a rebuttable presumption shall be
30 established that a person has knowledge that they are within the grounds
31 of a child day care or educational facility, PARK GROUNDS OR PLAYGROUNDS
32 when notice is conspicuously posted of the presence or proximity of such
33 facility; or

34 9. one or more preparations, compounds, mixtures or substances
35 containing gamma hydroxybutyric acid, as defined in paragraph four of
36 subdivision (e) of schedule I of section thirty-three hundred six of the
37 public health law, and said preparations, compounds, mixtures or
38 substances are of an aggregate weight of twenty-eight grams or more.

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

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

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

46 A person is guilty of criminal sale of a controlled substance in or
47 near school grounds, PARK GROUNDS OR PLAYGROUNDS when he OR SHE know-
48 ingly and unlawfully sells:

49 1. a controlled substance in violation of any one of subdivisions one
50 through six-a of section 220.34 of this article, when such sale takes
51 place upon school grounds or on a school bus; or

52 2. a controlled substance in violation of any one of subdivisions one
53 through eight of section 220.39 of this article, when such sale takes
54 place upon school grounds or on a school bus; or

55 3. a controlled substance in violation of any one of subdivisions one
56 through [six] SIX-A of section 220.34 of this article, when such sale

1 takes place upon the grounds of a child day care or educational
2 facility, PARK GROUNDS OR PLAYGROUNDS under circumstances evincing know-
3 ledge by the defendant that such sale is taking place upon such grounds;
4 or

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

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

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

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

33 S 4. This act shall take effect on the first of November next succeed-
34 ing the date on which it shall have become a law.