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

2880

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. KOON, GUNTHER, ORTIZ, MILLMAN, WEISENBERG, GALEF, MAGEE, EDDINGTON, ROBINSON, CANESTRARI -- Multi-Sponsored by -- M. of A. ABBATE, CHRISTENSEN, CLARK, COLTON, DelMONTE, FIELDS, HOOPER, JOHN, LAVINE, MAYERSOHN, REILLY, N. RIVERA, SWEENEY, TOWNS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to criminal sale of controlled substances in or near school grounds, public playgrounds or municipal parks

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 two new subdivisions 18 and 19 to read as follows:

18. "PUBLIC PLAYGROUND" MEANS IN OR ON, OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD OR OTHER FACILITY WITHIN THE REAL PROPERTY BOUNDARY LINE OF LAND ESTABLISHED BY THE LOCAL GOVERNING BOARD OF ANY COUNTY, TOWN, CITY OR VILLAGE FOR THE PURPOSE OF ALLOWING CITIZENS THE USE THEREOF FOR RECREATIONAL ACTIVITIES, OR WITHIN ONE THOUSAND FEET OF SUCH BOUNDARY LINE.

19. "MUNICIPAL PARK" MEANS IN OR ON, OR WITHIN ANY BUILDING, STRUCTURE, FACILITY OR LAND CONTAINED WITHIN THE REAL PROPERTY LINE OF MUNICIPALLY OWNED LAND WHICH IS MANAGED AND DEDICATED FOR PARK OR RECREATIONAL PURPOSES, OR WITHIN ONE THOUSAND FEET OF SUCH BOUNDARY LINE, BUT SHALL NOT INCLUDE STATE OWNED LAND WHICH IS DEDICATED FOR PARK OR RECREATIONAL PURPOSES.

S 2. Section 220.44 of the penal law, as amended by chapter 289 of the laws of 1998, 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, PUBLIC PLAYGROUNDS OR MUNICIPAL PARKS.

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

LBD02288-01-9

A person is guilty of criminal sale of a controlled substance in or near school grounds, PUBLIC PLAYGROUNDS OR MUNICIPAL PARKS when he 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 WITHIN A PUBLIC PLAYGROUND OR MUNICIPAL PARK; 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 WITHIN A PUBLIC PLAYGROUND OR MUNICIPAL PARK; or

3. a controlled substance in violation of any one of subdivisions one through six of section 220.34 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge 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 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.

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 when notice is conspicuously posted of the presence or proximity of such facility.

Criminal sale of a controlled substance in or near school grounds, PUBLIC PLAYGROUNDS OR MUNICIPAL PARKS is a class B felony.

S 3. Subdivision 7 of section 220.34 of the penal law, as amended by chapter 436 of the laws of 2006, is amended to read as follows:

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 IN A PUBLIC PLAYGROUND OR A MUNICIPAL PARK; or

S 4. Subparagraph (i) of paragraph (a) of subdivision 2 of section 70.70 of the penal law, as amended by chapter 436 of the laws of 2006, is amended to read as follows:

(i) for a class B felony, the term shall be at least one year and shall not exceed nine years, except that for the class B felony of criminal sale of a controlled substance in or near school grounds as defined in subdivision two of section 220.44 of this chapter or on a school bus as defined in subdivision seventeen of section 220.00 of this chapter OR ON A PUBLIC PLAYGROUND AS DEFINED IN SUBDIVISION EIGHTEEN OF SECTION 220.00 OF THIS CHAPTER OR IN A MUNICIPAL PARK AS DEFINED IN SUBDIVISION

NINETEEN OF SECTION 220.00 OF THIS CHAPTER, the term shall be at least two years and shall not exceed nine years;

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.