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

5075

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. GIGLIO, WALKER, KOLB, FINCH, HAWLEY, McKEVITT -- Multi-Sponsored by -- M. of A. BACALLES, BALL, BURLING, CALHOUN, CONTE, CROUCH, ERRIGO, McDONOUGH, OAKS, O'MARA, QUINN, RAIA, SAYWARD, THIELE, TOWNSEND -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing penalties for the sale of controlled substances at certain places frequented by youths

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. "COMMUNITY RECREATIONAL FACILITIES" MEANS IN, ON OR WITHIN ANY BUILDING OR STRUCTURE OR IN, ON OR WITHIN ANY FIELDS, LANDS OR GROUNDS, AND IN EITHER CASE OWNED, LEASED OR MAINTAINED BY THE STATE OR ANY AGENCY OR MUNICIPALITY THEREOF OR OWNED, LEASED OR MAINTAINED BY ANY NOT-FOR-PROFIT CORPORATION OR ELEEMOSYNARY INSTITUTION, CORPORATION OR ASSOCIATION, AND IN EITHER CASE, FOR PARK PURPOSES OR FOR THE PURPOSES OF RECREATION OR LEISURE.

19. "YOUTH RECREATIONAL CENTER" MEANS ANY BUILDING OR FACILITY IN WHICH A "YOUTH PROGRAM", AS DEFINED IN SECTION FOUR HUNDRED TWELVE OF THE EXECUTIVE LAW, APPROVED IN ACCORDANCE WITH SECTION FOUR HUNDRED TWENTY-TWO OF SUCH LAW BY THE STATE YOUTH COMMISSION, IS ESTABLISHED, OPERATED AND MAINTAINED; OR ANY BUILDING OR FACILITY IN WHICH A RECREATIONAL PROGRAM IS ESTABLISHED, OPERATED OR MAINTAINED OR IN WHICH RECREATIONAL EQUIPMENT IS PROVIDED FOR USE OR WITHIN WHICH RECREATIONAL ACTIVITIES TAKE PLACE ON A REGULAR OR PERIODIC BASIS, BY MEMBERS OR THEIR GUESTS OF A FOR-PROFIT OR NOT-FOR-PROFIT ORGANIZATION, WHETHER OR NOT INCORPORATED, WHICH ORGANIZATION OWNS, LEASES OR OPERATES SUCH BUILDING OR FACILITY, OR BY MEMBERS OF THE PUBLIC, AND WHERE THERE IS NO PROHIBITION AGAINST THE USE OF SUCH BUILDING OR FACILITY FOR SUCH PURPOSES BY PERSONS TWENTY-ONE YEARS OF AGE OR UNDER. IF THE USE OF SUCH

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

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BUILDING OR FACILITY FOR SUCH PURPOSES IS NOTORIOUS, WHETHER OR NOT ACTUALLY KNOWN TO THE INDIVIDUAL CHARGED, SUCH TERM SHALL INCLUDE ANY AREA WITHIN ONE THOUSAND FEET OF AN ENTRANCE OR EXIT TO SUCH FACILITY, UNLESS SUCH FACILITY IS LOCATED WITHIN A BUILDING, IN WHICH CASE SUCH TERM SHALL INCLUDE ANY AREA WITHIN ONE THOUSAND FEET OF AN ENTRANCE OR EXIT TO SUCH BUILDING. SUCH TERM SHALL NOT INCLUDE A FACILITY, LOCATED ON REAL PROPERTY OWNED BY ONE OR MORE NATURAL PERSONS, WHICH FACILITY IS UTILIZED EXCLUSIVELY BY THE OWNER OF SUCH REAL PROPERTY AND HIS OR HER IMMEDIATE FAMILY AND INVITED GUESTS THEREOF AND WHERE NO FEE IS CHARGED FOR THE USE OF SUCH FACILITY. EXAMPLES OF SUCH TERM SHALL INCLUDE BUT NOT BE LIMITED TO: A MEMBERSHIP OR PUBLIC OR COMMUNITY SWIMMING POOL OR GYMNASIUM OPEN TO THE PUBLIC OR TO MEMBERS OR THEIR GUESTS, OR PLACE OPEN TO THE PUBLIC OR TO MEMBERS OR THEIR GUESTS WHERE ATHLETIC EQUIPMENT IS PROVIDED, OR FACILITY FOR RECREATIONAL PURPOSES OWNED, LEASED OR OPERATED BY A YMCA, YMHA, BOY OR GIRL SCOUTS OF AMERICA, CHURCH, SYNAGOGUE, OR COMMUNITY GROUP, AND NOT PROHIBITED TO PERSONS TWENTY-ONE YEARS OF AGE OR UNDER.

S 2. 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, COMMUNITY RECREATIONAL FACILITIES OR A YOUTH RECREATIONAL CENTER; or

S 3. 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, COMMUNITY RECREATIONAL FACILITIES OR A YOUTH RECREATIONAL CENTER.

A person is guilty of criminal sale of a controlled substance in or near school grounds, COMMUNITY RECREATIONAL FACILITIES OR A YOUTH RECREATIONAL CENTER 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, COMMUNITY RECREATIONAL FACILITIES OR A YOUTH RECREATIONAL CENTER; 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, COMMUNITY RECREATIONAL FACILITIES OR A YOUTH RECREATIONAL CENTER; 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, COMMUNITY RECREATIONAL FACILITIES OR A YOUTH RECREATIONAL CENTER.

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, COMMUNITY RECREATIONAL FACILITIES OR A YOUTH RECREATIONAL CENTER 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.