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"Corzine OKs easing of drug sentences," The Press of Atlantic City, 1-13-10, p. C7

"Corzine signs law easing mandatory drug terms," Burlington County Times, 1-13-10

"Corzine signs 10 bills, including revised 1-gun-per-month law," NewJerseyNewsroom.com.

<http://www.newjerseynewsroom.com/state/corzine-signs-10-bills-including-revised-1-gun-per-month-law>

LAW/RWH

[Second Reprint]

ASSEMBLY, No. 2762

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 19, 2008

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman NELLIE POU

District 35 (Bergen and Passaic)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblywoman MILA M. JASEY

District 27 (Essex)

Co-Sponsored by:

**Senators Lesniak, Cunningham, Scutari, Weinberg, Gordon, Ruiz, Turner
and Assemblyman Gusciora**

SYNOPSIS

Authorizes court to waive or reduce parole ineligibility or grant probation for drug-free school zone violations under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on November 23, 2009, with amendments.

(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning distributing, dispensing or possessing
2 controlled dangerous substances on or near school property²,
3 supplementing Title 2C of the New Jersey Statutes,² and
4 amending P.L.1987, c.101.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read
10 as follows:

11 1. a. Any person who violates subsection a. of N.J.S.2C:35-5
12 by distributing, dispensing or possessing with intent to distribute a
13 controlled dangerous substance or controlled substance analog
14 while on any school property used for school purposes which is
15 owned by or leased to any elementary or secondary school or school
16 board, or within 1,000 feet of such school property or a school bus,
17 or while on any school bus, is guilty of a crime of the third degree
18 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
19 the court to a term of imprisonment. Where the violation involves
20 less than one ounce of marijuana, the term of imprisonment shall
21 include the imposition of a minimum term which shall be fixed at,
22 or between, one-third and one-half of the sentence imposed, or one
23 year, whichever is greater, during which the defendant shall be
24 ineligible for parole. In all other cases, the term of imprisonment
25 shall include the imposition of a minimum term which shall be
26 fixed at, or between, one-third and one-half of the sentence
27 imposed, or three years, whichever is greater, during which the
28 defendant shall be ineligible for parole. Notwithstanding the
29 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
30 [~~\$150,000.00~~] \$150,000 may also be imposed upon any conviction
31 for a violation of this section.

32 b. (1) Notwithstanding the provisions of N.J.S.2C:35-12 or
33 subsection a. of this section, the court may waive or reduce the
34 minimum term of parole ineligibility required under subsection a. of
35 this section or place the defendant on probation pursuant to
36 paragraph (2) of subsection b. of N.J.S.2C:43-2. In making this
37 determination, the court shall consider:

38 (a) the extent of the defendant's prior criminal record and the
39 seriousness of the offenses for which the defendant has been
40 convicted;

41 (b) the specific location of the present offense in relation to the
42 school property, including distance from the school and the
43 reasonable likelihood of exposing children to drug-related activities
44 at that location;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted May 22, 2008.

²Senate SJU committee amendments adopted November 23, 2009.

1 (c) whether school was in session at the time of the offense; and
2 (d) whether children were present at or in the immediate vicinity
3 of the location when the offense took place.

4 (2) The court shall not waive or reduce the minimum term of
5 parole ineligibility or sentence the defendant to probation if it finds
6 that:

7 (a) the offense took place while on any school property used for
8 school purposes which is owned by or leased to any elementary or
9 secondary school² or school² board, or while on any school bus; or

10 (b) the defendant in the course of committing the offense used
11 or threatened violence² [,] or² was in possession of a firearm² [, or
12 committed a violation of subsection b. of N.J.S.2C:29-2]².

13 If the court at sentencing elects not to impose a minimum term of
14 imprisonment and parole ineligibility pursuant to this subsection,
15 imposes a term of parole ineligibility less than the minimum term
16 prescribed in subsection a. of this section, or places the defendant
17 on probation for a violation of subsection a. of this section, the
18 sentence shall not become final for 10 days in order to permit the
19 prosecution to appeal the court's finding and the sentence imposed.
20 'The Attorney General shall develop guidelines to ensure the
21 uniform exercise of discretion in making determinations regarding
22 whether to appeal a decision to waive or reduce the minimum term
23 of parole ineligibility or place the defendant on probation.'

24 Nothing in this subsection shall be construed to establish a basis
25 for overcoming a presumption of imprisonment authorized or
26 required by subsection d. of N.J.S.2C:44-1, or a basis for not
27 imposing a term of imprisonment or term of parole ineligibility
28 authorized or required to be imposed pursuant to subsection f. of
29 N.J.S.2C:43-6 or upon conviction for a crime other than the offense
30 set forth in this subsection.

31 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
32 provisions of law, a conviction arising under this section shall not
33 merge with a conviction for a violation of subsection a. of
34 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or
35 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).

36 d. It shall be no defense to a prosecution for a violation of this
37 section that the actor was unaware that the prohibited conduct took
38 place while on or within 1,000 feet of any school property. Nor
39 shall it be a defense to a prosecution under this section, or under
40 any other provision of this title, that no juveniles were present on
41 the school property at the time of the offense or that the school was
42 not in session.

43 e. It is an affirmative defense to prosecution for a violation of
44 this section that the prohibited conduct took place entirely within a
45 private residence, that no person 17 years of age or younger was
46 present in such private residence at any time during the commission
47 of the offense, and that the prohibited conduct did not involve
48 distributing, dispensing or possessing with the intent to distribute or

1 dispense any controlled dangerous substance or controlled
2 substance analog for profit. The affirmative defense established in
3 this section shall be proved by the defendant by a preponderance of
4 the evidence. Nothing herein shall be construed to establish an
5 affirmative defense with respect to a prosecution for an offense
6 defined in any other section of this chapter.

7 f. In a prosecution under this section, a map produced or
8 reproduced by any municipal or county engineer for the purpose of
9 depicting the location and boundaries of the area on or within 1,000
10 feet of any property used for school purposes which is owned by or
11 leased to any elementary or secondary school or school board, or a
12 true copy of such a map, shall, upon proper authentication, be
13 admissible and shall constitute prima facie evidence of the location
14 and boundaries of those areas, provided that the governing body of
15 the municipality or county has adopted a resolution or ordinance
16 approving the map as official finding and record of the location and
17 boundaries of the area or areas on or within 1,000 feet of the school
18 property. Any map approved pursuant to this section may be
19 changed from time to time by the governing body of the
20 municipality or county. The original of every map approved or
21 revised pursuant to this section, or a true copy thereof, shall be filed
22 with the clerk of the municipality or county, and shall be
23 maintained as an official record of the municipality or county.
24 Nothing in this section shall be construed to preclude the
25 prosecution from introducing or relying upon any other evidence or
26 testimony to establish any element of this offense; nor shall this
27 section be construed to preclude the use or admissibility of any map
28 or diagram other than one which has been approved by the
29 governing body of a municipality or county, provided that the map
30 or diagram is otherwise admissible pursuant to the Rules of
31 Evidence.

32 (cf: P.L.1997, c.181, s.5).

33
34 ²2. (New section) Notwithstanding any court rule limiting the
35 time period within which a motion to reduce or change a sentence
36 may be filed, any person who, on the effective date of this act, is
37 -serving a mandatory minimum sentence as provided by section 1 of
38 P.L.1987, c.101 (C.2C:35-7) and who has not had his sentence
39 suspended or been paroled or discharged may move to have his
40 sentence reviewed by the court. If the court finds that the sentence
41 under review does not serve the interests of justice, the judge may
42 re-sentence the defendant pursuant to subsection b. of section 1 of
43 P.L.1987, c.101 (C.2C:35-7). In determining whether the sentence
44 under review serves the interests of justice, the court shall consider
45 all relevant circumstances, including whether the defendant pleaded
46 guilty pursuant to a negotiated agreement, and whether the
47 prosecution has agreed to dismiss one or more charges which, upon
48 conviction, would have subjected the defendant to the presumption

1 of imprisonment under subsection d. of N.J.S.2C:44-1. The
2 determination by the court shall not be subject to appeal.²

3

4 ²[2] 3.² This act shall take effect immediately ²and also shall
5 apply to any case pending on the date of enactment².

1 to establish an affirmative defense with respect to a prosecution for
2 an offense defined in any other section of this chapter.

3 f. In a prosecution under this section, a map produced or
4 reproduced by any municipal or county engineer for the purpose of
5 depicting the location and boundaries of the area on or within 1,000
6 feet of any property used for school purposes which is owned by or
7 leased to any elementary or secondary school or school board, or a
8 true copy of such a map, shall, upon proper authentication, be
9 admissible and shall constitute prima facie evidence of the location
10 and boundaries of those areas, provided that the governing body of
11 the municipality or county has adopted a resolution or ordinance
12 approving the map as official finding and record of the location and
13 boundaries of the area or areas on or within 1,000 feet of the school
14 property. Any map approved pursuant to this section may be
15 changed from time to time by the governing body of the
16 municipality or county. The original of every map approved or
17 revised pursuant to this section, or a true copy thereof, shall be filed
18 with the clerk of the municipality or county, and shall be
19 maintained as an official record of the municipality or county.
20 Nothing in this section shall be construed to preclude the
21 prosecution from introducing or relying upon any other evidence or
22 testimony to establish any element of this offense; nor shall this
23 section be construed to preclude the use or admissibility of any map
24 or diagram other than one which has been approved by the
25 governing body of a municipality or county, provided that the map
26 or diagram is otherwise admissible pursuant to the Rules of
27 Evidence.

28 (cf: P.L.1997, c.181, s.5)

29

30 2. This act shall take effect immediately.

31

32

33 *SPONSOR'S* STATEMENT

34

35 This bill would authorize the court to waive or reduce the
36 minimum term of parole ineligibility or place on probation a person
37 convicted of distributing, dispensing, or possessing with the intent
38 to distribute a controlled dangerous substance while on or within a
39 1,000 feet of school property or a school bus.

40 In making a determination under the bill, the court is required to
41 consider the following factors:

42 (1) the extent of the person's prior criminal record and the
43 seriousness of the offenses;

44 (2) where the offense was committed in relation to the school
45 property, including distance from the school or bus and the
46 reasonable likelihood of exposing children to drug-related activities
47 there;

1 (3) whether school was in session at the time of the offense; and

2 (4) whether children were present at or in the immediate vicinity
3 of where the offense occurred.

4 A court would be prohibited under the bill from waiving or
5 reducing the minimum term of parole eligibility or placing the
6 person on probation if:

7 (1) the offense occurred on school property or a school bus; or

8 (2) the defendant, while committing the offense, used or
9 threatened violence; possessed a firearm; or resisted arrest or eluded
10 a police officer.

11 A waived or reduced term of parole ineligibility or probation
12 sentence imposed by the court under the bill would not be final for
13 10 days so that the prosecution can appeal the court's
14 determination.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2762

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 22, 2008

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2762.

As reported, Assembly Bill No. 2762 authorizes the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.

In making a determination under the amended bill, the court is required to consider the following factors:

- (1) the extent of the person's prior criminal record and the seriousness of the offenses;
- (2) where the offense was committed in relation to the school property, including distance from the school or bus and the reasonable likelihood of exposing children to drug-related activities there;
- (3) whether school was in session at the time of the offense; and
- (4) whether children were present at or in the immediate vicinity of where the offense occurred.

A court would be prohibited under the bill from waiving or reducing the minimum term of parole eligibility or placing the person on probation if:

- (1) the offense occurred on school property or a school bus; or
- (2) the defendant, while committing the offense, used or threatened violence; possessed a firearm; or eluded, or attempted to elude, a police officer by way of motor vehicle or boat.

A waived or reduced term of parole ineligibility or probation sentence imposed by the court under the amended bill would not be final for 10 days so that the prosecution can appeal the court's determination. The committee amended the bill to require the Attorney General to develop guidelines to ensure uniformity in appeals by prosecutors under this provision.

COMMITTEE AMENDMENTS:

The committee amended the bill to require the Attorney General to develop guidelines to ensure uniformity in appeals by prosecutors under the provision that allows them 10 days to appeal the court's decision to waive or reduce the term of parole ineligibility or place the defendant on probation.

MINORITY STATEMENT

By Assemblymen Bramnick and Rible

This bill authorizes the court in its discretion to waive or reduce the mandatory minimum prison term, or to grant probation, for non-violent offenders who are convicted of distributing, selling, or possessing illegal drugs in a drug free school zone. The court must review the prior criminal record of the offender, how close the offense occurred to a school or school property, whether school was in session at the time, and whether children were present when the crime took place. The bill makes it easier for these offenders to avoid mandatory jail time and get their lives back on track.

However, it is our position that the bill does not go far enough in either protecting the public or properly treating offenders. For example, there is no requirement under the bill that these offenders must receive treatment, through the drug courts or other programs, for their drug problems. We question the effectiveness of legislation that would put these people back on the streets with no further supervision, monitoring or guidance from knowledgeable, trained professionals in the probation, law enforcement and rehabilitation fields.

Most disturbingly, the bill contains no additional or enhanced penalties for the worst offenders, those who commit drug crimes on school property or, in the course of their crime, use or threaten violence, carry a weapon, or resist or elude a police officer. There is no change in the status quo for these offenders. Under the bill, they would only be charged with a third degree crime and be required to serve a one-to three-year mandatory prison term.

We would support legislation that upgrades violent drug offenses committed in drug free school zones to a second degree crime. Second degree crimes carry a term of imprisonment of between five and ten years, which is a longer term than the current mandatory minimum term under the drug free school zone law. We believe that the bill needs further revision to address these important issues in order to send a clear message to those who commit drug offenses in the drug free school zones.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 2762
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 2, 2009

SUMMARY

Synopsis: Authorizes court to waive or reduce parole ineligibility or grant probation for drug-free school zone violations under certain circumstances.

Type of Impact: General Fund savings

Agencies Affected: Department of Corrections (DOC), State Parole Board, Judiciary

Executive Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate general fund savings - See comments below		

- The Office of Legislative Services **concurs** with the Executive estimate, and adds that DOC data indicates that the ongoing operating expenses of housing a State sentenced prison inmate is \$39,099 per year for the duration of that offender's incarceration. The cost of probation or parole is less, depending upon the program in which the offender is participating. Assuming that the average annual cost of probation or parole would total about \$10,000 per participant, for each individual who remains on parole or probation as opposed to incarceration, the State would save \$29,000.
- The bill would authorize the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.
- The Administrative Office of the Courts (AOC) states that according to data from PROMIS Gavel, during 2008, a total of 3,622 defendants were convicted of distribution of a controlled dangerous substance within 1,000 of school property or a school bus. Of those defendants, 3,564 pled guilty and 58 were convicted after a trial. The AOC notes that waiving or reducing the minimum term of imprisonment currently required by Section 1 of P.L.1987, c.101 (2C:35-7), or giving judges the option of imposing a probationary sentence, could

reduce the number of defendants who choose to go to trial when charged with that offense, thus reducing the need for judicial resources.

BILL DESCRIPTION

Assembly Bill No. 2762 (1R) of 2008 would authorize the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.

In making a determination under the bill, the court is required to consider the following factors:

- (1) the extent of the person's prior criminal record and the seriousness of the offenses;
- (2) where the offense was committed in relation to the school property, including distance from the school or bus and the reasonable likelihood of exposing children to drug-related activities there;
- (3) whether school was in session at the time of the offense; and
- (4) whether children were present at or in the immediate vicinity of where the offense occurred.

A court would be prohibited under the bill from waiving or reducing the minimum term of parole eligibility or placing the person on probation if:

- (1) the offense occurred on school property or a school bus; or
- (2) the defendant, while committing the offense, used or threatened violence; possessed a firearm; or resisted arrest or eluded a police officer.

A waived or reduced term of parole ineligibility or probation sentence imposed by the court under the bill would not be final for 10 days so that the prosecution can appeal the court's determination.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Judiciary

The AOC states that according to data from PROMIS Gavel, during 2008, a total of 3,622 defendants were convicted of distribution of a controlled dangerous substance within 1,000 of school property or a school bus. Of those defendants, 3,564 pled guilty and 58 were convicted after a trial. The AOC notes that waiving or reducing the minimum term of imprisonment currently required by Section 1 of P.L.1987, c.101 (2C:35-7), or giving judges the option of imposing a probationary sentence, could reduce the number of defendants who choose to go to trial when charged with that offense, thus reducing the need for judicial resources.

Department of Corrections

None received.

State Parole Board

The New Jersey State Parole Board states that because it is unable to determine the number of individuals who would be affected by this bill's enactment, it is unable to estimate the fiscal impact on the Parole Board.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate, and adds that DOC data indicates that the ongoing operating expenses of housing a State sentenced prison inmate is \$39,099 per year for the duration of that offender's incarceration. The cost of probation or parole is less, depending upon the program in which the offender is participating. Assuming that the average annual cost of probation or parole would total about \$10,000 per participant, for each individual who remains on parole or probation as opposed to incarceration, the State would save \$29,000.

Section: Judiciary
Analyst: Anne Raughley
Principal Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2762

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 2009

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2762 (1R).

Assembly Bill No. 2762 (1R) authorizes the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.

The bill amends N.J.S.A. 2C:35-7 which currently sets the term of imprisonment to include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or three years, whichever is greater, during which the defendant shall be ineligible for parole. If the violation involves less than one ounce of marijuana, the term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or one year, whichever is greater, during which the defendant shall be ineligible for parole.

In making a determination under the bill to waive or reduce the minimum term of parole ineligibility or place the defendant on probation, the court is required to consider the following factors:

- (1) the extent of the person's prior criminal record and the seriousness of the offenses;
- (2) where the offense was committed in relation to the school property, including distance from the school or bus and the reasonable likelihood of exposing children to drug-related activities there;
- (3) whether school was in session at the time of the offense; and
- (4) whether children were present at or in the immediate vicinity of where the offense occurred.

The bill prior to committee amendment provided a court would be prohibited from waiving or reducing the minimum term of parole eligibility or placing the person on probation if:

- (1) the offense occurred on school property or a school bus; or

(2) the defendant, while committing the offense, used or threatened violence; possessed a firearm; or eluded, or attempted to elude, a police officer by way of motor vehicle or boat.

The committee amended the bill in subparagraph (a) of paragraph (2) of subsection b. concerning school property to correct the language which erroneously identified school board property instead of schools and school board property so as to parallel the language in subsection a. The committee amendments also eliminate the reference to the crime of eluding so that a court would be prohibited from waiving or reducing the minimum term of parole eligibility or placing the person on probation if the defendant, while committing the offense, used or threatened violence or possessed a firearm.

A waived or reduced term of parole ineligibility or probation sentence imposed by the court under the amended bill would not be final for 10 days so that the prosecution can appeal the court's determination. The Attorney General is required to develop guidelines to ensure uniformity in appeals by prosecutors under this provision.

In addition, the committee amended the bill to add a new section 2 providing that any person who, on the effective date of this bill, is serving a mandatory minimum sentence as provided by section 1 of P.L.1987, c.101 (C.2C:35-7) and who has not had his sentence suspended or been paroled or discharged may move to have his sentence reviewed by the court. If the court finds that the sentence under review does not serve the interests of justice, the judge may re-sentence the defendant pursuant to the provisions of the bill. The determination by the court shall not be subject to appeal.

The committee amended the effective date to provide that the bill also shall apply to any case pending on the enactment date so that the sentencing judge may apply the provisions of this bill.

As amended, this bill is identical to Senate No. 1866 (1R).

FISCAL NOTE
 [Second Reprint]
ASSEMBLY, No. 2762
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JANUARY 12, 2010

SUMMARY

- Synopsis:** Authorizes court to waive or reduce parole ineligibility or grant probation for drug-free school zone violations under certain circumstances.
- Type of Impact:** General Fund savings.
- Agencies Affected:** Department of Corrections, State Parole Board, Judiciary.

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate General Fund Savings - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate, and adds that Department of Corrections (DOC) data indicates that the ongoing operating expenses of housing a State sentenced prison inmate is \$39,099 per year for the duration of that offender's incarceration. The cost of probation or parole is less, depending upon the program in which the offender is participating. Assuming that the average annual cost of probation or parole would total about \$10,000 per participant, for each individual who remains on parole or probation as opposed to incarceration, the State would save \$29,000.
- The OLS also notes that the amendment, allowing offenders currently serving mandatory minimum sentences for the offenses listed in the bill, to request that their sentences be reviewed by the court, may increase the number of individuals affected by the bill, and increase potential savings.
- The bill would authorize the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.
- The Administrative Office of the Courts (AOC) states that according to data from PROMIS Gavel, during 2008, a total of 3,622 defendants were convicted of distribution of a controlled

dangerous substance within 1,000 of school property or a school bus. Of those defendants, 3,564 pled guilty and 58 were convicted after a trial. The AOC notes that waiving or reducing the minimum term of imprisonment currently required by Section 1 of P.L.1987, c.101 (C.2C:35-7), or giving judges the option of imposing a probationary sentence, could reduce the number of defendants who choose to go to trial when charged with that offense, thus reducing the need for judicial resources.

BILL DESCRIPTION

Assembly Bill No. 2762 (2R) of 2008 authorizes the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.

The bill amends N.J.S.A. 2C:35-7 which currently sets the term of imprisonment to include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or three years, whichever is greater, during which the defendant shall be ineligible for parole. If the violation involves less than one ounce of marijuana, the term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or one year, whichever is greater, during which the defendant shall be ineligible for parole.

In making a determination under the bill to waive or reduce the minimum term of parole ineligibility or place the defendant on probation, the court is required to consider the following factors:

- (1) the extent of the person's prior criminal record and the seriousness of the offenses;
- (2) where the offense was committed in relation to the school property, including distance from the school or bus and the reasonable likelihood of exposing children to drug-related activities there;
- (3) whether school was in session at the time of the offense; and
- (4) whether children were present at or in the immediate vicinity of where the offense occurred.

The bill prior to committee amendment provided a court would be prohibited from waiving or reducing the minimum term of parole eligibility or placing the person on probation if:

- (1) the offense occurred on school property or a school bus; or
- (2) the defendant, while committing the offense, used or threatened violence; possessed a firearm; or eluded, or attempted to elude, a police officer by way of motor vehicle or boat.

The committee amended the bill in subparagraph (a) of paragraph (2) of subsection b. concerning school property to correct the language which erroneously identified school board property instead of schools and school board property so as to parallel the language in subsection a. The committee amendments also eliminate the reference to the crime of eluding so that a court would be prohibited from waiving or reducing the minimum term of parole eligibility or placing the person on probation if the defendant, while committing the offense, used or threatened violence or possessed a firearm.

A waived or reduced term of parole ineligibility or probation sentence imposed by the court under the amended bill would not be final for 10 days so that the prosecution can appeal the court's determination. The Attorney General is required to develop guidelines to ensure uniformity in appeals by prosecutors under this provision. In addition, the committee amended the bill to add a new section 2 providing that any person who, on the effective date of this bill, is serving a mandatory minimum sentence as provided by section 1 of P.L.1987, c.101 (C.2C:35-7)

and who has not had his sentence suspended or been paroled or discharged may move to have his sentence reviewed by the court. If the court finds that the sentence under review does not serve the interests of justice, the judge may re-sentence the defendant pursuant to the provisions of the bill. The determination by the court shall not be subject to appeal.

The committee amended the effective date to provide that the bill also shall apply to any case pending on the enactment date so that the sentencing judge may apply the provisions of this bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Judiciary

The AOC states that according to data from PROMIS Gavel, during 2008, a total of 3,622 defendants were convicted of distribution of a controlled dangerous substance within 1,000 of school property or a school bus. Of those defendants, 3,564 pled guilty and 58 were convicted after a trial. The AOC notes that waiving or reducing the minimum term of imprisonment currently required by Section 1 of P.L.1987, c.101 (C.2C:35-7), or giving judges the option of imposing a probationary sentence, could reduce the number of defendants who choose to go to trial when charged with that offense, thus reducing the need for judicial resources.

Department of Corrections

None received.

State Parole Board

The New Jersey State Parole Board states that because it is unable to determine the number of individuals who would be affected by this bill's enactment, it is unable to estimate the fiscal impact on the Parole Board.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate, and adds that DOC data indicates that the ongoing operating expenses of housing a State sentenced prison inmate is \$39,099 per year for the duration of that offender's incarceration. The cost of probation or parole is less, depending upon the program in which the offender is participating. Assuming that the average annual cost of probation or parole would total about \$10,000 per participant, for each individual who remains on parole or probation as opposed to incarceration, the State would save \$29,000.

The OLS also notes that the amendment, allowing offenders currently serving mandatory minimum sentences for the offenses listed in the bill, to request that their sentences be reviewed by the court, may increase the number of individuals affected by the bill, and increase potential savings.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).

1 to establish an affirmative defense with respect to a prosecution for
2 an offense defined in any other section of this chapter.

3 f. In a prosecution under this section, a map produced or
4 reproduced by any municipal or county engineer for the purpose of
5 depicting the location and boundaries of the area on or within 1,000
6 feet of any property used for school purposes which is owned by or
7 leased to any elementary or secondary school or school board, or a
8 true copy of such a map, shall, upon proper authentication, be
9 admissible and shall constitute prima facie evidence of the location
10 and boundaries of those areas, provided that the governing body of
11 the municipality or county has adopted a resolution or ordinance
12 approving the map as official finding and record of the location and
13 boundaries of the area or areas on or within 1,000 feet of the school
14 property. Any map approved pursuant to this section may be
15 changed from time to time by the governing body of the
16 municipality or county. The original of every map approved or
17 revised pursuant to this section, or a true copy thereof, shall be filed
18 with the clerk of the municipality or county, and shall be
19 maintained as an official record of the municipality or county.
20 Nothing in this section shall be construed to preclude the
21 prosecution from introducing or relying upon any other evidence or
22 testimony to establish any element of this offense; nor shall this
23 section be construed to preclude the use or admissibility of any map
24 or diagram other than one which has been approved by the
25 governing body of a municipality or county, provided that the map
26 or diagram is otherwise admissible pursuant to the Rules of
27 Evidence.

28 (cf: P.L.1997, c.181, s.5)

29

30 2. This act shall take effect immediately.

31

32

33 *SPONSOR'S* STATEMENT

34

35 This bill would authorize the court to waive or reduce the
36 minimum term of parole ineligibility or place on probation a person
37 convicted of distributing, dispensing, or possessing with the intent
38 to distribute a controlled dangerous substance while on or within a
39 1,000 feet of school property or a school bus.

40 In making a determination under the bill, the court is required to
41 consider the following factors:

42 (1) the extent of the person's prior criminal record and the
43 seriousness of the offenses;

44 (2) where the offense was committed in relation to the school
45 property, including distance from the school or bus and the
46 reasonable likelihood of exposing children to drug-related activities
47 there;

48 (3) whether school was in session at the time of the offense; and

1 (4) whether children were present at or in the immediate vicinity
2 of where the offense occurred.

3 A court would be prohibited under the bill from waiving or
4 reducing the minimum term of parole eligibility or placing the
5 person on probation if:

6 (1) the offense occurred on school property or a school bus; or

7 (2) the defendant, while committing the offense, used or
8 threatened violence; possessed a firearm; or resisted arrest or eluded
9 a police officer.

10 A waived or reduced term of parole ineligibility or probation
11 sentence imposed by the court under the bill would not be final for
12 10 days so that the prosecution can appeal the court's
13 determination.

FISCAL NOTE
SENATE, No. 1866
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 2, 2009

SUMMARY

Synopsis: Authorizes court to waive or reduce parole ineligibility or grant probation for drug-free school zone violations under certain circumstances.

Type of Impact: General Fund savings

Agencies Affected: Department of Corrections (DOC), State Parole Board, Judiciary

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate general fund savings - See comments below		

- The Office of Legislative Services **concurs** with the Executive estimate, and adds that DOC data indicates that the ongoing operating expenses of housing a State sentenced prison inmate is \$39,099 per year for the duration of that offender's incarceration. The cost of probation or parole is less, depending upon the program in which the offender is participating. Assuming that the average annual cost of probation or parole would total about \$10,000 per participant, for each individual who remains on parole or probation as opposed to incarceration, the State would save \$29,000.
- The bill would authorize the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.
- The Administrative Office of the Courts (AOC) states that according to data from PROMIS Gavel, during 2008, a total of 3,622 defendants were convicted of distribution of a controlled dangerous substance within 1,000 of school property or a school bus. Of those defendants, 3,564 pled guilty and 58 were convicted after a trial. The AOC notes that waiving or reducing the minimum term of imprisonment currently required by Section 1 of P.L.1987, c.101 (2C:35-7), or giving judges the option of imposing a probationary sentence, could reduce the number of defendants who choose to go to trial when charged with that offense, thus reducing the need for judicial resources.

BILL DESCRIPTION

Senate Bill No. 1866 of 2008 would authorize the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.

In making a determination under the bill, the court is required to consider the following factors:

- (1) the extent of the person's prior criminal record and the seriousness of the offenses;
- (2) where the offense was committed in relation to the school property, including distance from the school or bus and the reasonable likelihood of exposing children to drug-related activities there;
- (3) whether school was in session at the time of the offense; and
- (4) whether children were present at or in the immediate vicinity of where the offense occurred.

A court would be prohibited under the bill from waiving or reducing the minimum term of parole eligibility or placing the person on probation if:

- (1) the offense occurred on school property or a school bus; or
- (2) the defendant, while committing the offense, used or threatened violence; possessed a firearm; or resisted arrest or eluded a police officer.

A waived or reduced term of parole ineligibility or probation sentence imposed by the court under the bill would not be final for 10 days so that the prosecution can appeal the court's determination.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Judiciary

The AOC states that according to data from PROMIS Gavel, during 2008, a total of 3,622 defendants were convicted of distribution of a controlled dangerous substance within 1,000 of school property or a school bus. Of those defendants, 3,564 pled guilty and 58 were convicted after a trial. The AOC notes that waiving or reducing the minimum term of imprisonment currently required by Section 1 of P.L.1987, c.101 (2C:35-7), or giving judges the option of imposing a probationary sentence, could reduce the number of defendants who choose to go to trial when charged with that offense, thus reducing the need for judicial resources.

Department of Corrections

None received.

State Parole Board

The New Jersey State Parole Board states that because it is unable to determine the number of individuals who would be affected by this bill's enactment, it is unable to estimate the fiscal impact on the Parole Board.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate, and adds that DOC data indicates that the ongoing operating expenses of housing a State sentenced prison inmate is \$39,099 per year for the duration of that offender's incarceration. The cost of probation or parole is less, depending upon the program in which the offender is participating. Assuming that the average annual cost of probation or parole would total about \$10,000 per participant, for each individual who remains on parole or probation as opposed to incarceration, the State would save \$29,000.

Section: Judiciary

*Analyst: Anne Raughley
 Principal Fiscal Analyst*

*Approved: David J. Rosen
 Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1866

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 2009

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1866.

Senate Bill No. 1866 authorizes the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.

The bill amends N.J.S.A. 2C:35-7 which currently sets the term of imprisonment to include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or three years, whichever is greater, during which the defendant shall be ineligible for parole. If the violation involves less than one ounce of marijuana, the term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or one year, whichever is greater, during which the defendant shall be ineligible for parole.

In making a determination under the bill to waive or reduce the minimum term of parole ineligibility or place the defendant on probation, the court is required to consider the following factors:

- (1) the extent of the person's prior criminal record and the seriousness of the offenses;
- (2) where the offense was committed in relation to the school property, including distance from the school or bus and the reasonable likelihood of exposing children to drug-related activities there;
- (3) whether school was in session at the time of the offense; and
- (4) whether children were present at or in the immediate vicinity of where the offense occurred.

The bill prior to committee amendment provided a court would be prohibited from waiving or reducing the minimum term of parole eligibility or placing the person on probation if:

- (1) the offense occurred on school property or a school bus; or
- (2) the defendant, while committing the offense, used or threatened violence; possessed a firearm; or eluded, or attempted to elude, a police officer by way of motor vehicle or boat.

The committee amended the bill in subparagraph (a) of paragraph (2) of subsection b. concerning school property to correct the language which erroneously identified school board property instead of schools and school board property so as to parallel the language in subsection a. The committee amendments also eliminate the reference to the crime of eluding so that a court would be prohibited from waiving or reducing the minimum term of parole eligibility or placing the person on probation if the defendant, while committing the offense, used or threatened violence or possessed a firearm.

A waived or reduced term of parole ineligibility or probation sentence imposed by the court under the amended bill would not be final for 10 days so that the prosecution can appeal the court's determination. The Attorney General is required to develop guidelines to ensure uniformity in appeals by prosecutors under this provision. This language was added by committee amendment to conform to the Assembly version.

In addition, the committee amended the bill to add a new section 2 providing that any person who, on the effective date of this bill, is serving a mandatory minimum sentence as provided by section 1 of P.L.1987, c.101 (C.2C:35-7) and who has not had his sentence suspended or been paroled or discharged may move to have his sentence reviewed by the court. If the court finds that the sentence under review does not serve the interests of justice, the judge may re-sentence the defendant pursuant to the provisions of the bill. The determination by the court shall not be subject to appeal.

The committee amended the effective date to provide that the bill also shall apply to any case pending on the enactment date so that the sentencing judge may apply the provisions of this bill.

As amended, this bill is identical to Assembly, No. 2762 (2R).