

POSSESSION WITH INTENT TO DISTRIBUTE
CONTROLLED DANGEROUS SUBSTANCES NEAR OR ON SCHOOL PROPERTY
USED FOR SCHOOL PURPOSES
(N.J.S.A. 2C:35-7)

The defendant is charged with possessing with intent to distribute a controlled dangerous substance near or on school property, used for school purposes. The statute upon which this charge is based reads, in its pertinent part, as follows:

Any person who violates [another section of our law] by possessing with intent to distribute a controlled dangerous substance [or controlled substance analog] while on any school property used for school purposes which is owned by any elementary or secondary school or school board, or within 1,000 feet of any school property or school bus, or while on any school bus, is guilty of a crime. . .

In order for you to find the defendant guilty of this charge, the State must first prove beyond a reasonable doubt that the defendant knowingly or purposely possessed with intent to distribute a controlled dangerous substance (or controlled substance analog). As I have previously instructed you, the elements of possession with intent to distribute are:

1. S_____ in evidence is (insert appropriate CDS or CDS analog.)
2. The defendant possessed or had under his/her control S_____.
3. The defendant had the intent to distribute S_____ when he/she possessed it or had it under his/her control.¹
4. That the defendant acted knowingly or purposely in doing so.

In addition to proving the possession with intent to distribute, the State must also prove beyond a reasonable doubt that this act occurred:

(CHARGE APPROPRIATE TERM)

on (or within 1,000 feet of) any school property

OR

on (or within 1,000 feet of) a school bus.

The term school property means any property which is used for school purposes and is owned by or leased to an elementary school, secondary school or school board.² The 1,000 feet

¹ See State v. Gregory, 220 N.J. 413, 417, 421 (2015), (defendant must clarify that the word intent refers to 'intent to distribute' and not merely 'intent to possess' the CDS or CDS analog).

² Where there is a question whether the property was used for school purposes charge the following:

"In addition to determining whether property is school property, you

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zone extends from the outermost boundary of the school property and not from the school building itself. It does not matter whether the school is public, private or parochial. It is also no defense to this charge that no juveniles were present on the school property at the time of the offense, or that the school was not in session.

The possibility that defendant may have been unaware that the prohibited conduct took place on or within 1,000 feet of school property is not a defense to this crime³ and shall not be considered by you in your deliberations. I further charge you that whether the defendant intended to make the distribution within 1,000 feet of the school is irrelevant.

(CHARGE WHERE APPROPRIATE)

[It is an affirmative defense that the crime took place entirely within a private residence. This defense does not apply if any person 17 years or younger was present anywhere in the residence at any time during the commission of the offense or if the offense was committed for profit. This defense must be proven by the defendant by a preponderance of the evidence. Therefore, if you find that it is more likely than not that:

1. The offense took place totally within a private residence; and
2. no person 17 years of age or younger was present anywhere in the residence at any time during the commission of the offense; and
3. the offense was not committed for profit, then you must find the defendant not guilty.

This defense applies only to this charge and shall not affect your verdict concerning any other count of the indictment.]

If you find that the State has proven all these elements beyond a reasonable doubt [and the defendant has failed his/her burden of proof with regard to the affirmative defense], then you must return a verdict of guilty. On the other hand, if you find that the State has failed to prove

must determine the purpose for which it is used. You must decide whether the property is regularly, consistently, and actually used for school purposes, and whether the property's appearance would give an objectively reasonable person reason to know that it was used regularly, consistently, and actually for school purposes." State v. Ivory, 124 N.J. 582, 587, 592 (1991).

³ The statute eliminates this defense only in cases involving school property and does not eliminate such a defense in cases in which the prohibited conduct occurred on or within 1,000 feet of a school bus.

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any one of these elements beyond a reasonable doubt [or the defendant has met his/her burden of proof with regard to the affirmative defense], then you must return a verdict of not guilty.