

# LEGISLATIVE SURVEY

## GUN-FREE SCHOOL ZONES

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### *I. Introduction*

It is difficult to ignore the growing epidemic of gun violence in America and its effect upon children.<sup>1</sup> In response to public outcry against gun violence, the New Jersey State Legislature has recently introduced a flurry of legislation<sup>2</sup> aimed at reducing and controlling gun violence.<sup>3</sup> An integral piece of the proposed legis-

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<sup>1</sup> See Craig R. Sautter, *Standing Up to Violence: Public Schools*, PHI DELTA KAPPAN, Jan. 1995, at K1. According to the Children's Defense Fund, 25 children are killed and 60 children are injured every two days by firearms. Every three hours, an adolescent is killed by a gun. More young Americans have been killed in the United States by guns during the last 13 years than during the Vietnam War. According to the National Safety School Center, guns were responsible for 35 deaths and 92 injuries in American schools in 1994. *Id.*

<sup>2</sup> See, e.g., S. 860, 206th N.J. Legis., 1st Sess. (1994). Pending bills address imitation firearms, parental responsibility to keep guns away from children, increases in penalties for juveniles who commit crimes with firearms, and suspending students who bring guns to school. Senate bill 860 would make the possession of an imitation firearm on school property a disorderly person's offense. *Id.* Another bill imposes a crime of the third degree on an adult when a minor injures himself or another with the adult's improperly-stored firearm. S. 222, 206th N.J. Legis., 1st Sess. (1994). Assembly bill 28 upgrades the offense of improperly storing a firearm within easy access of a minor to a crime of the fourth degree, if the minor gains access to a firearm and inflicts injury on another, the adult is guilty of a crime of the third degree. A. 28, 206th N.J. Legis., 1st Sess. (1994). Other proposed legislation permits courts to fine a parent or custodian whose minor child possesses or uses a firearm during commission of a crime with a fine to be paid to Violent Crimes Compensation Board. S. 214, 206th N.J. Legis., 1st Sess. (1994). Senate bill 1092, creates mandatory 30-day incarceration for juveniles for certain weapon possession offenses, if committed by an adult, he or she would be subject to mandatory term of imprisonment. S. 1092, 206th N.J. Legis., 1st Sess. (1994). Finally, a measure sponsored by Assemblyman Alex DeCroce (R-Morris Plains) and Assemblyman John A. Rocco (R-Camden) requires schools to post signs alerting the public that firearm possession is a criminal offense and permits juveniles who violate it to be tried as adults. A. 1818, 206th N.J. Legis., 1st Sess. (1994).

<sup>3</sup> Matthew Reilly, *Assembly Votes Ban on Gun-Toting Pupils*, STAR-LEDGER, Dec. 6, 1994, at 1. In addition to criminal penalties, the legislature is working on implementing other means to control school violence. Bill A. 2348, the "Zero Tolerance for Guns Act" (sponsored by Assemblymen Rocco and Steve Corodemus (R-Mon-

lation is the Gun-Free School Zone.<sup>4</sup> This legislation, modeled after the Drug-Free School Zone,<sup>5</sup> increases the penalties beyond the current legislation for illegal possession of a firearm within 1,000 feet of a school.<sup>6</sup> This survey will discuss the legislative history and intent of the Gun-Free School Zone bills, the current New Jersey law concerning possession of a gun on school property, and proposed changes to current law.

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mouth)), would require a mandatory one year suspension for students who bring guns to school. The students would be educated in either alternative schools or at home. *Id.* at 1, 18.

New Jersey Governor Christine Todd Whitman, however, conditionally vetoed this bill because it does not conform to the federal Gun-Free School Zone Act of 1994. Matthew Reilly, *Governor Fails to Pull Trigger on School Guns*, STAR-LEDGER, Mar. 10, 1995, at 1. The Governor's conditional veto proposed to give superintendents more discretion in deciding whether to remove a student. *Id.* The federal Gun-Free School Zone Act of 1994 provides:

Except as provided in paragraph (3), each State receiving Federal funds under this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis. 5A U.S.C.A. § 14601(b)(1) (West 1995).

*Id.*

Governor Whitman's Advisory Council on Juvenile Justice recently proposed a new cabinet-level "Youth Authority" position to oversee New Jersey's juvenile corrections programs. Mary Jo Patterson, *New Agency Planned to Tackle Youth Crime*, STAR-LEDGER, Nov. 22, 1994, at 1. Currently, the Corrections Department and Department of Health and Human Services share this responsibility. The Advisory Council also suggested implementing a juvenile "boot camp," improving services for juvenile sex offenders, pyromaniacs, substance abusers, and establishing alternative detention plans. *Id.* at 14.

<sup>4</sup> A. 33 & 1355, 206th N.J. Legis., 1st Sess. (1994). See 131 N.J. LEGIS. INDEX No. 10, at 50 (Oct. 27, 1994) (describing legislative history).

<sup>5</sup> See Bill Sanderson, *Panel Oks Stiffer Term for Having Gun by School*, THE RECORD (Northern N.J.), Sept. 20, 1994, at A4. The Drug-Free School Zone imposes stiffer penalties for distribution and possession of controlled substances within 1,000 feet of a school. *Id.* Critics of the Drug-Free School Zone question its effectiveness in two ways. Michael Markowitz, *Drug-Free Zone's Impact Blunted by Plea Bargains Sentences not so Mandatory*, THE RECORD (Northern N.J.), Mar. 20, 1994, at A1. First, the law has not ended the drug problem in and around schools, as arrests have increased or remained constant since the law was enacted. Second, those who are arrested under the Drug-Free School Zone law do not serve mandatory sentences, as nine out of ten cases result in plea arrangements and reduced sentences. *Id.* at 19.

<sup>6</sup> A. 33 & 1355, 206th N.J. Legis., 1st Sess. (1994) [hereinafter A. 33 & 1355]. See 131 N.J. LEGIS. INDEX No. 10, at 50 (Oct. 27, 1994).

## II. Legislative History

Two bills effecting the Gun-Free School Zone were recently introduced in the New Jersey State Legislature.<sup>7</sup> New Jersey Assembly Bill 1355 (hereinafter "A. 1355") was introduced on February 17, 1994.<sup>8</sup> New Jersey Assembly Bill 33 (hereinafter "A. 33") was introduced on March 10, 1994.<sup>9</sup> The two bills were combined by the Assembly Judiciary, Law and Public Safety Committee.<sup>10</sup> The Committee then reported favorably on the substitute for A. 1355 and A. 33 and the combined bill was released on September 19, 1994.<sup>11</sup>

The bill subsequently passed the Assembly on December 1, 1994 by a vote of 78-0 and was then received in the Senate.<sup>12</sup> The bill was referred first to the Senate Education Committee, on December 1, 1994, then the Law and Public Safety Committee on December 8, 1994.<sup>13</sup>

## III. Legislative Intent

The intent of the Gun-Free School Zone bill is to shield schools from gun violence.<sup>14</sup> The need for this protection is evi-

<sup>7</sup> See 131 N.J. LEGIS. INDEX NO. 8, at 64 (Sept. 12, 1994); 131 N.J. LEGIS. INDEX NO. 10 at 50 (Oct. 27, 1994). (describing legislative history).

<sup>8</sup> 131 N.J. LEGIS. INDEX NO. 8, at 64 (Sept. 12, 1994). The bill was sponsored by New Jersey State Assemblymen William J. Pascrell, Jr. (D-Paterson), Frank Catania (R-Passaic), and John F. Gaffney (R-Linwood). *Id.*

<sup>9</sup> 131 N.J. LEGIS. INDEX NO. 10, at 50 (Oct. 27, 1994). The bill was sponsored by Assemblymen David C. Russo, Jr. (R-Midland Park) and Patrick J. Roma (R-Paramus). Both bills were then sent to the Judiciary, Law and Public Safety Committee. *Id.*

<sup>10</sup> See ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY COMM. STATEMENT TO ASSEMBLY COMM. SUBSTITUTE FOR ASSEMBLY, NOS. 33 AND 1355 STATE OF NEW JERSEY (Sept. 19, 1994).

<sup>11</sup> *Id.*

<sup>12</sup> 132 N.J. LEGIS. INDEX NO. 1, at 57 (Jan. 23, 1995). In 1992, a similar bill was introduced in conjunction with the Republican effort to overturn a ban on assault weapons. A. 7, 205th N.J. Legis., 1st Sess. (1992); See *Soft on Crime in New Jersey*, N.Y. TIMES, June 6, 1992, at 22 (criticizing the attempted repeal of the assault weapons ban as "contemptuous of voters and soft on crime"). See also Wayne King, *A Ban Without a Bite*, N.Y. TIMES, Aug. 9, 1992, at 46 (describing the terms of the repeal).

However, the legislation, which would simultaneously lift the assault rifle ban and create the Gun-Free School Zone, was not adopted. See Richard Lacayo, *Wounding the Gun Lobby; A Populist Backlash Against Random Violence and the Small-Arms Race Nicks the Once Bullet Proof NRA*, TIME, Mar. 29, 1993, at 29.

<sup>13</sup> 132 N.J. LEGIS. INDEX NO. 1, at 57 (Jan. 23, 1995).

<sup>14</sup> Sanderson, *supra* note 5, at A-4. Assemblyman Pascrell was quoted as saying, "[w]e as a Legislature must send a message that guns will not be tolerated in school,

denced by the staggering statistics concerning minors and gun violence.<sup>15</sup> Specifically, in New Jersey, there have been several cases of children bringing weapons to school.<sup>16</sup>

Awareness of the problem has led to increasing public support of gun control measures.<sup>17</sup> As a result, federal and state legislators

period." Principals and educators also support the bill. *Id.* Assemblyman David Russo (R-Midland Park), was quoted as saying, "New Jersey not unlike other states, faces a real problem with regard to the increased instances of firearms turning up on school grounds, and this problem demands a solution." *Russo-Roma Bill Creating Gun-Free-School Zones Gains Committee Release* — (Assembly Republican News, Sept. 19, 1994). Assemblyman Pascrell, was quoted as saying, "[o]ur chief intent here is to make kids safe. . ." and further, there is a "need for stronger efforts to keep guns away from kids." Ron Marsico, *Panel Clears Bill Barring Guns at, Near Schools*, STAR-LEDGER, Sept. 20, 1994.

Legislation is not the only way that New Jersey is dealing with the violence problem. Lower Camden County Regional High School District has local police officers assigned to patrol the junior and senior high schools. Melanie Burney, *NJ Schools Taking Steps to Crack Down on Violence*, THE RECORD (Northern N.J.), Sept. 7, 1994, at A-04. The Bridgewater-Raritan Regional School District has implemented an innovative anti-violence campaign where students pledge not to bring weapons to school. This program was initiated when, a student brought a loaded .38-caliber handgun to school and another brought a BB gun to school. *Id.*

<sup>15</sup> Mary McGrath, *New Weapons Against Student Violence, Scary, Schools State: Give Districts More Power*, THE RECORD (Northern N.J.), July 7, 1994, at A-1. Assaults involving weapons in New Jersey schools totaled 187 in 1989-90 and rose to 602 in 1991-92. The homicide rate for males ages 15-19 rose from 13 per 100,000 in 1985 to 33 per 100,000 in 1991. *In Six Years, Homicides Double for Male Teens*, THE RECORD (Northern N.J.), Oct. 14, 1994, at A-20. Further, 88% of the 15-19-year-olds killed by homicide died by a gun. According to the Annual Violence, Vandalism, and Substance Abuse Report prepared by New Jersey school principals, violent incidents rose from 9,603 in 1991-92 to 13,000 in 1992-93. Mary McGrath, *Reading Fighting & Arithmetic? Vandalism Drops as School Violence Persists*, THE RECORD (Northern N.J.), Sept. 12, 1994, at A-1 [hereinafter McGrath, *Reading Fighting & Arithmetic?*]. Another indication of the severity of New Jersey's youth violence is the fact that New Jersey has one of the nations highest juvenile arrest rates for violent crime. *Id.* Also, a Federal Justice Department report found that the number of juvenile court cases involving serious offenses (murders and aggravated assaults) in urban areas across the country, grew by 68% between 1988 and 1992. Carolyn Skorneck, *Juvenile Court Cases Balloon Jump 26 Percent Over Four Years*, THE RECORD (Northern N.J.), July 25, 1994, at A-11. Wesley Skogan, political science and urban affairs professor at Northwestern University, finds that youths are becoming involved in crime at an increasing rate due to hopelessness, the drug market, and the access to guns. *Id.*

<sup>16</sup> McGrath, *Reading Fighting & Arithmetic?*, *supra* note 15, at A-5. In Bergen County, there were 46 weapons incidents, while in Passaic county 28 weapons incidents were reported last year. In June 1994, three Leonia students were arrested for keeping a gun in a school locker. Weapons were taken from a dozen Fort Lee 7th and 8th graders. *Id.*

<sup>17</sup> *38,000 Victims Shoes Take Message to Capitol Gone Too Soon, Silent March Urges Gun Laws*, THE RECORD, (Northern N.J.), Sept. 21, 1994, at A-1. Recently, the Coalition to

have sought to increase regulation concerning gun possession near schools.<sup>18</sup>

#### IV. *Current Law Forbidding Gun Possession on School Premises*

Regulation of guns at school is not a new idea. Currently, New Jersey's statute provides that any person who knowingly possesses a firearm while on the grounds of a school, without the written authorization from the institution, is guilty of a crime of the third degree even though that person has the proper permit to own a firearm.<sup>19</sup> In addition, possession of a dangerous weapon on

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Stop Gun Violence and Handgun Control, Inc. collected 38,000 pairs of shoes and arranged them around the reflecting pool in Washington, D.C. This act was symbolic of the number of deaths resulting from guns across the country. *Id.*

<sup>18</sup> The Gun-Free Schools Zone Act of 1990, Pub. L. No. 101-647 § 1702, 104 Stat. 4844 (1990) (codified at 18 U.S.C. § 922(q) (Supp. IV 1992)), effectively creates a federal Gun-Free School Zone, but does not preempt a state or local government from enacting its own, similar legislation. 18 U.S.C. § 922(q)(3).

The constitutionality of this federal legislation, however, is in dispute. Two federal circuits have split opinions on its constitutionality. See *United States v. Lopez*, 2 F.3d 1342 (5th Cir. 1993), *cert. granted* 62 U.S.L.W. 3690 (U.S. Apr. 18, 1994) (No. 93-1260) (holding that the statute was invalid as it went beyond the power of Congress); *United States v. Edwards*, 13 F.3d 291 (9th Cir. 1993), *petition for cert. filed*, Mar. 25, 1994 (No. 93-8487) (holding the statute constitutional.) The Supreme Court of the United States granted certiorari from the *Lopez* decision and heard oral arguments on November 8, 1994 but has yet to issue a ruling. See Linda Greenhouse, *High Court Considers Limits of Congress's Power*, N.Y. TIMES, Apr. 19, 1994, at 20.

See also James M. Maloney, *Shooting for an Omnipotent Congress: The Constitutionality of Federal Regulation of Intrastate Firearms Possession*, 62 FORDHAM L. REV. 1795 (1994) (discussion of the federal legislation, the lower court rulings, and postulation on the upcoming Supreme Court ruling).

<sup>19</sup> N.J. STAT. ANN. § 2C:39-5(e) (West Supp. 1994), reads:

(1) Any person who knowingly has in his possession any firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, is guilty of a crime of the third degree, irrespective of whether he possesses a valid permit to carry the firearm or a valid firearms purchaser identification card.

(2) Any person who knowingly possess any weapon enumerated in paragraphs (3) and (4) of subsection r. of N.J. STAT. ANN. § 2C:39-1 or any components which can readily be assembled into a firearm or other weapon enumerated in subsection r of N.J. STAT. ANN. § 2C:39-1 or any other weapon under circumstances not manifestly appropriate for such lawful use as it may have, while in or upon any part of the buildings or grounds of any school college, university, or other educational institution without the written authorization of the governing officer of the institution is guilty of a crime of the fourth degree.

*Id.*

school grounds is a crime of the fourth degree.<sup>20</sup> Certain people, however, including law enforcement officers, military personnel, and fire department members are exempt from these possession limitations.<sup>21</sup> Further, New Jersey law does not prevent a person

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<sup>20</sup> N.J. STAT. ANN. § 2C:39-1(r)(3) - (4) (West Supp. 1994) defines dangerous weapons. The list includes: "gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, . . . stun guns; and any other device which emits . . . tear gas." *Id.* N.J. STAT. ANN. § 2C:39-5(e)(1) (West Supp. 1994) prohibits possession of these items under certain circumstances. N.J. STAT. ANN. § 2C:39-5 (West Supp. 1994) also provides that knowing possession of machine guns, handguns, rifles, shotguns, assault firearms, and other weapons under circumstances not manifestly appropriate for lawful use, without proper state firearm licensing is a crime of the third degree, when not on school property. *Id.*

<sup>21</sup> N.J. STAT. ANN. § 2C:39-6 (West Supp. 1994) provides that certain groups are exempt from all firearm possession limitations, provided they have completed firearm training. These people include:

members of the Armed Forces of the United States, the National Guard, Federal law enforcement officers, State Police Officers, Sheriffs, county prosecutors, deputy attorney generals, State investigators employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigators of the State Commission of Investigation, Alcoholic Beverage Control Enforcement Bureau of the Division of the State Police, State Park Ranger, Prison or Jail Wardens, civilian employees of the United States Government as required by the performance of his or her duties, Police Officers of any county or municipality, Airport security officers, Fire department members.

*Id.* However, N.J. STAT. ANN. § 2C:39-6(b) (West Supp. 1994) exemptions apply only to N.J. STAT. ANN. § 2C:39-5(a), (b), (c), not subsections (d), (e) or (f) (West Supp. 1994). N.J. STAT. ANN. § 2C:39-6(b) states that Subsections a., b., and c. of N.J. STAT. ANN. § 2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or

(2) A licensed dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided however, that the weapon is carried in the manner specified in subsection g. of this section.

*Id.* Thus, these two groups may be prosecuted for possessing a dangerous weapon, assault rifle, or a firearm on school premises.

N.J. STAT. ANN. § 2C:39-6(c) (West Supp. 1994), sets forth another group of people are exempt from N.J. STAT. ANN. § 2C:39-5(b) - (c) (West Supp. 1994) (the possession of handguns, rifles and shotguns while not on school property), but not exempt from other provisions of N.J. STAT. ANN. § 2C:39-5 (West Supp. 1994). The list includes: agent of Division of Taxation, State conservation officer, court attendant appointed by a sheriff, railway express guard, bank guard, member of a legally

over eighteen years of age from possession of pocket-sized mace on school property for the purpose of personal protection.<sup>22</sup>

Although possession of a gun on school grounds is restricted, New Jersey citizens enjoy a general right to own and possess firearms.<sup>23</sup> New Jersey law allows private possession of a firearm at a business, residence, or on land owned or occupied by that person.<sup>24</sup> Additionally, the transportation of a firearm between residence, business, and place of purchase or repair is permitted under New Jersey law.<sup>25</sup> Individuals may transport firearms for the purpose of hunting, target practice, or fishing under certain cir-

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recognized military organization while under orders, officer of the Society for the Prevention of Cruelty to Animals, employee of public utilities transporting explosives, railway policeman, campus police officer, nuclear power plant security guard, Transit police officer of the New Jersey Transit Police Department, while in the State of New Jersey and parole officer. N.J. STAT. ANN. § 2C:39-6(d)(1) (West Supp. 1994) provides that prohibition on possession of rifles, shot guns, and other weapons without a license (N.J. STAT. ANN. § 2C:39-5(c) and (d) (West Supp. 1994)) does not apply to unloaded antique firearms or firearms fired for the purpose of exhibition at an authorized target range. Moreover, N.J. STAT. ANN. § 2C:39-6(d)(2) (West Supp. 1994) provides:

Subsection a, of N.J. STAT. ANN. § 2C:39-3 and subsection d. of N.J. STAT. ANN. § 2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J. STAT. ANN. § 2C:58-3.

*Id.*

<sup>22</sup> N.J. STAT. ANN. § 2C:39-6(i) (West Supp. 1994). In analyzing this statute, the Assembly Judiciary, Law and Public Safety Committee Statement explains that the 1992 amendment from Assembly, No. 802-L.1992 c. 94 allows a person over 18 years of age to carry mace on the grounds of an educational institution. The Committee reasons that students taking night classes may carry mace onto the grounds for personal protection. *Id.*

<sup>23</sup> N.J. STAT. ANN. § 2C:58-1 et seq. (West Supp. 1994) provides New Jersey's firearm licensing procedures. The statute sets out that no one of good character and good repute shall be denied a permit to purchase a handgun. N.J. STAT. ANN. § 2C:58-3(c) (West Supp. 1994). Persons convicted of a crime, people who are drug or alcohol dependant, anyone with a physical defect which makes it unsafe for him or her to handel a firearm, or anyone under 18 is disallowed from obtaining a permit. *Id.* Obtaining a permit to carry a handgun, however, is more difficult. One must demonstrate that he or she is not under a disability, is familiar with the use and handling of a handgun and has a justifiable need to carry a gun. N.J. STAT. ANN. § 2C:58-4(c) (West Supp. 1994). An applicant for a license to possess and carry a machine gun must show that the permit is required by the public safety or welfare. N.J. STAT. ANN. § 2C:58-5 (West Supp. 1994).

<sup>24</sup> N.J. STAT. ANN. § 2C:39-6(e) (West Supp. 1994).

<sup>25</sup> *Id.* The prohibition of possession of firearms on school property, however, is not lifted for these exemptions. Thus, the place of business, residence, or land owned

cumstances.<sup>26</sup> The firearm must be properly licensed, appropriate for hunting or fishing, the person must have a hunting or fishing license, and the firearm must be properly secured.<sup>27</sup>

### V. *The Current Proposal*

The proposed A. 33 and 1355 amend current school possession restrictions.<sup>28</sup> First, the bill provides that any person who knowingly possesses a firearm while in or on school property, without written authorization from the school and a valid permit or firearms purchaser identification card, is guilty of a crime of the second degree.<sup>29</sup> This section increases the severity of the existing offense.<sup>30</sup>

Second, the proposed bill provides that any person who possesses a firearm, in violation of New Jersey law, while in or within 1,000 feet of a school or while on a school bus commits a crime of the second degree.<sup>31</sup> Third, the bill provides that a defense is not

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or transportation between them occurs on school property, one could be prosecuted.  
*Id.*

<sup>26</sup> N.J. STAT. ANN. § 2C:39-6(f)(1)-(4).

<sup>27</sup> N.J. STAT. ANN. § 2C: 39-6(g) (West Supp. 1994) provides that weapons shall be carried unloaded, contained in a closed and fastened case, or locked in the trunk of the automobile. Further, the course of travel is limited to only such deviations as are reasonably necessary under the circumstances. If this kind of possession occurs on school property, however, the exemption does not apply, as N.J. STAT. ANN. § 2C:39-5(e) (West Supp. 1994) is unaffected by the hunting, fishing and target practice exemption.

<sup>28</sup> See generally A. 33 & 1355, *supra* note 6.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* Subsection 3 reads:

(3) Any person who knowingly has in his possession any firearm while in or upon any part of the buildings or grounds owned or leased by any school, college, university or other educational institution and used for school purposes, without the written authorization of the governing officer of the institution and without possessing a valid permit to carry the firearm, or if a permit to carry is not required by law, the appropriate valid firearms purchased identification card or valid permit to purchase a handgun, is guilty of a crime of the second degree.

*Id.*

<sup>31</sup> *Id.* The text of subsection 4 reads:

Any person who (a) knowingly has in his possession any firearm in or within 1,000 feet from the outermost boundaries of buildings or grounds owned or leased by any school, college, university, or other educational institution and used for school purposes, or while on any school bus and (b) possesses the firearm in violation of any law of this State is guilty of a crime of the second degree.



available to an individual who claims that he or she did not know that the possession took place within 1,000 feet of a school, or that no students were on the property at the time.<sup>32</sup>

The last subsection provides that maps produced by municipal or county engineers for the purpose of depicting the locations of schools shall be admissible upon proper authentication when prosecuting under this statute.<sup>33</sup> Such a map is considered *prima facie* evidence of the location, provided that the municipality has approved the map as official.<sup>34</sup>

The Gun-Free School Zone legislation is inapplicable to certain people.<sup>35</sup> Transportation of firearms between a place of business, residence, premises, place of purchase or place of repair would not violate the Gun-Free School Zone.<sup>36</sup> Moreover, the bill exempts rifle or pistol club members and those carrying a firearm for hunting, fishing or exhibition purposes from the limitations of the Gun-Free School Zone, provided the firearms are properly stored.<sup>37</sup>

## VI. Assembly Bill 33 as Introduced

The proposed legislation, as it stands now, is different from both bills as they were originally introduced. As introduced, A. 33 increases the degree of the offense for possession of a firearm while on school property and increases the penalty for possessing a firearm without a permit within 1,000 feet of a school.<sup>38</sup> Further, A. 33 would impose a mandatory prison term for violation of the

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*Id.*

<sup>32</sup> *Id.* Subsection 5 provides:

It shall not be a defense to a prosecution for a violation of paragraph (1) of this subsection that the actor was unaware that the prohibited possession took place while in any part of the buildings of any school, college, university or other educational institution. It will not be a defense to a prosecution under this subsection that no juveniles or students were present on the school property at the time of the offense or that the school was not in session.

*Id.*

<sup>33</sup> A. 33 & 1355, *supra* note 6.

<sup>34</sup> *Id.*

<sup>35</sup> See *id.* (proposing amendment to section N.J. STAT. ANN. § 2C:39-6(b) (West Supp. 1994)). See *supra* note 21 for discussion of exempt groups.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See A. 33, *supra* note 6.

statute.<sup>39</sup>

With a valid permit or identification card for the firearm, possession of a firearm on school property would remain classified as a crime of the third degree.<sup>40</sup> Possession of a firearm on school property without a permit, however, is elevated to a second degree crime.<sup>41</sup> Both violations carry mandatory imprisonment.<sup>42</sup> Further, the bill would make possession of a firearm within 1,000 feet of a school without a valid permit or identification card, a crime of the second degree.<sup>43</sup> The originally proposed bill explicitly precluded a defense of lack of knowledge that possession took place on the grounds of a school, as to the offense of possession on school grounds, but did not explicitly preclude a such a defense for possession within 1,000 feet of a school.<sup>44</sup> The same people exempted from the current statute would have been exempted from the proposed Gun-Free School Zone.<sup>45</sup>

### VII. *Assembly Bill 1355 as Introduced*

As introduced, New Jersey A. 1355 would have supplemented Chapter 39 of Title 2C of the New Jersey Statutes and amended current law.<sup>46</sup> The new statute would have made the knowing possession of a firearm while on any school property or within 1,000 feet of a school, or school bus, without authority from the school, a

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* The bill originally provided:

The person [found guilty of violating this statute] shall be sentenced by the court to a mandatory term of imprisonment pursuant to subsection c. or g. of N.J. STAT. ANN. § 2C:43-6 if the grounds therefor are established at a hearing held in accordance with subsection d. or h. of N.J. STAT. ANN. § 2C:43-6.

*Id.*

Further, amending N.J. STAT. ANN. § 2C:43-6(c) (West Supp. 1994) the bill provided for a minimum term of five years imprisonment, without parole, for a conviction of possession of a firearm while on the grounds of a school without the authorization of the school and without a valid permit. Proposing to amend N.J. STAT. ANN. § 2C:43-6(g) (West Supp. 1994), the bill provides that possession of a machine or assault rifle on or within 1,000 feet of a school carried a minimum term of ten years for a first degree offense, five years for a second or third degree offense, and 18 months for a fourth degree offense. *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> A. 33, *supra* note 6.

<sup>45</sup> *Id.* See also *supra* note 21 for list of exempted persons.

<sup>46</sup> *Id.*

crime of the third degree, irrespective of a valid permit.<sup>47</sup> The bill imposes a mandatory term of imprisonment between one third and one half of the sentence imposed or eighteen months, whichever is greater.<sup>48</sup> A conviction arising under the statute would not merge with violation of the existing statute.<sup>49</sup> Further, A. 1355 would have disallowed the defense that the actor was unaware that possession took place within 1,000 feet of a school or that there were no children present.<sup>50</sup> The proposed statute also provided for map production as admissible evidence of school location.<sup>51</sup>

### VIII. Conclusion

Certainly, gun violence impacts students in New Jersey's schools and state action is necessary to address this problem. The Gun-Free School Zone legislation alone, however, will not end this concern. As evidenced by the Drug-Free School initiative, the threat of imprisonment has not removed drugs from our society or our schools. Thus, harsh criminal penalties may not prove to be a strong disincentive to gun possession. Moreover, the Gun-Free School Zone is not a substantive restriction to gun access. In fact,

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<sup>47</sup> *Id.* The new section would have added to N.J. STAT. ANN. § 2C:39-5 (West Supp. 1994):

Any person who knowingly possesses any firearm while on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property or a school bus, or while on any school bus, without the written authorization of the governing officer of the institution, is guilty of a crime of the third degree irrespective of whether the person possesses a valid permit to carry the firearm or a valid firearms purchaser identification card, and shall be sentenced by the court to a term of imprisonment. The term of imprisonment imposed pursuant to this section 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 eighteen months, whichever is greater, during which the defendant shall be ineligible for parole.

*Id.* The language of the current bill includes colleges, universities, or other educational institutions as protected properties, while A. 1355 limited the Gun-Free School Zone to elementary or secondary schools. Compare A. 33 & 1355, 206th N.J. Legis., 1st Sess. (1994) with A. 1355, 206th N.J. Legis., 1st Sess. (1994) (the former including schools of higher education, while the later including only primary education schools in the realm of the Gun-Free School Zone.)

<sup>48</sup> *Id.*

<sup>49</sup> A. 1355, *supra* note 6.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

the law is activated only after a gun has come within 1,000 feet of a school. By the time possession is detected, it may be too late to prevent any harm.

Instead of focusing solely on gun possession, a broad approach is required to heal the violence in our society. New Jersey's multi-prong approach, removing violent students, providing social services and support networks, and reforming the juvenile justice system appears to be the correct one. Coupled with New Jersey's other efforts, the Gun-Free School Zone may act to foster a safe environment in our schools where students can successfully learn in peace.