

DISTRIBUTING OR DISPENSING CONTROLLED DANGEROUS SUBSTANCES
NEAR OR ON SCHOOL PROPERTY USED FOR SCHOOL PURPOSES
(N.J.S.A. 2C:35-7)

The defendant is charged with (distributing) (dispensing) 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 distributing or dispensing 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 distributed or dispensed a controlled dangerous substance (or controlled substance analog). As I have previously instructed you, the elements of distributing or dispensing a controlled dangerous substance are:

- (1) S_____ is (insert appropriate controlled dangerous substance or controlled substance analog)
- (2) That the defendant distributed S_____ on the date alleged in the indictment.
- (3) That the defendant acted knowingly or purposely in doing so.

In addition to proving the distribution or dispensing, 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.¹ The 1,000 feet

¹ 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 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).

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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 crime² and shall not be considered by you in your deliberations.

(CHARGE WHERE APPROPRIATE)

[It is 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, then you must return a verdict of guilty. On the other hand, if you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must return a verdict of not guilty.

² 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.