

STATE OF NEW YORK

2833

2005-2006 Regular Sessions

IN ASSEMBLY

January 28, 2005

Introduced by M. of A. DiNAPOLI, CARROZZA, GALEF, MAGNARELLI, KOON, PHEFFER, ABBATE, EDDINGTON -- Multi-Sponsored by -- M. of A. CYMBROWITZ, LAVELLE, RAMOS, SEDDIO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the use of a child to commit a controlled substance offense

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new section 220.28 to
2 read as follows:

3 § 220.28 Use of a child to commit a controlled substance offense.

4 1. A person is guilty of use of a child to commit a controlled
5 substance offense when, being eighteen years old or more, he or she
6 commits a felony sale or felony attempted sale of a controlled substance
7 in violation of this article and, as part of that criminal transaction,
8 knowingly uses a child to effectuate such felony sale or felony
9 attempted sale of such controlled substance.

10 2. For purposes of this section, "uses a child to effectuate the felo-
11 ny sale or felony attempted sale of such controlled substance" means
12 conduct by which the actor: (a) conceals such controlled substance on or
13 about the body or person of such child for the purpose of effectuating
14 the criminal sale or attempted sale of such controlled substance to a
15 third person; or (b) directs, forces or otherwise requires such child to
16 sell or attempt to sell or offer direct assistance to the defendant in
17 selling or attempting to sell such controlled substance to a third
18 person.

19 For purposes of this section, "child" means a person less than sixteen
20 years of age.

21 Use of a child to commit a controlled substance offense is a class E
22 felony.

23 § 2. This act shall take effect on the first of November next succeed-
24 ing the date on which it shall have become a law.

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

LBD03773-01-5

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A2833

SPONSOR: DiNapoli (MS)

TITLE OF BILL: An act to amend the penal law, in relation to the use of a child to commit a controlled substance offense

PURPOSE/SUMMARY OF PROVISIONS: This bill would create a new crime of the use of a child to commit a controlled substance offense when adults (age 18 or over) use a child (under sixteen) to effectuate a felony sale or attempted felony sale of a controlled substance. Using a child to effectuate such a sale or attempted sale would mean concealing the drugs on or about the body of a child to effectuate the sale or directing, forcing or otherwise requiring the child to sell, attempt to sell or assist in selling the drugs to a third party. This crime would be a class E felony.

JUSTIFICATION: Far too often, adults are using children to effectuate the sale of drugs. Police are increasingly encountering situations where adults, in order to escape detection and arrest, are using children to directly undertake sales, to provide distraction and cover during drug sales and to even hide drugs on their bodies. This bill would address these troubling circumstances with a specific penalty aimed at adults who are unlawfully using children in this manner.

LEGISLATIVE HISTORY:

1999: A.8861-A - Referred to Codes and Rules

2000: A.8861-A - Passed Assembly

2001: A.5624 - Referred to codes, Reported to Rules

2002: A.5624 - Referred to Codes

2003: A.3939 - Reported referred to rules

2004: A.3939 - referred to codes

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: The first of November next succeeding the date on which it shall have become a law.
