LAVERY, C. J., with whom MIHALAKOS, J., joins, dissenting in part. Although I agree with the majority's disposition of the defendant's first three claims on appeal and with the majority's conclusion that the defendant was improperly sentenced, I respectfully dissent from the majority's conclusions that (1) General Statutes § 21a-279 (d) is a separate crime rather than a sentence enhancement provision and (2) a sentence may be imposed under that subsection notwithstanding that the conviction for violating § 21a-279 (c), the predicate violation whose sentence is enhanced by operation of § 21a-279 (d), was merged with the defendant's conviction for violating General Statutes § 21a-277 (b).

I

The majority concludes that § 21a-279 (d) is a separate crime rather than a sentence enhancement provision. I respectfully disagree with that conclusion.

The majority notes its agreement with the defendant's contention, to which the state also gave its assent, that possession of marijuana in violation of § 21a-279 (c) is a lesser offense included within the greater offense of possession of marijuana with intent to sell in violation of § 21a-277 (b). I agree with that conclusion. Because

the only difference in the elements that the state must prove to obtain a conviction under those two statutes is the intent to sell, it is not the case that ''each provision requires proof of a fact which the other does not,'' as is required for a conviction of both offenses to survive double jeopardy scrutiny. (Internal quotation marks omitted.) *State* v. *Chicano,* 216 Conn. 699, 707, 584 A.2d 425 (1990), cert. denied, 501 U.S. 1254, 111 S. Ct. 2898, 115 L. Ed. 2d 1062 (1991).

The majority also notes, and I agree, that the normal practice of the courts in such cases is to merge the offense of possession, as a lesser included offense, with the offense of possession with intent to sell such that the defendant, though convicted of both crimes, is sentenced only for the greater crime of possession with intent to sell. Alternatively, if the defendant is in fact sentenced on both crimes, this court or our Supreme Court has in the past vacated the sentence on the lesser offense. See id., 725.

Where I part company with the majority, however, is with its conclusion that § 21a-279 (d) is a separate crime as opposed to a sentence enhancement provision. That distinction is important in this case because, if that subsection is a sentence enhancement, the court cannot impose it on the defendant in this case, where the conviction under subsection (c), the only conviction that subsection (d) can operate to enhance, has merged, as the majority agrees, with the conviction under § 21a-277 (b).

A

The majority asserts that its conclusion that subsection (d) of § 21a-279 sets forth a separate crime is supported by ''[t]he plain language'' of the statute. I agree that the language of the statute is a natural place to begin the task of statutory construction. ''The language . . . of a statute can provide evidence of [legislative] intent.'' *State* v. *Greco,* 216 Conn. 282, 293, 579 A.2d 84 (1990).

The language of the statute provides, however, that the sentence contained in subsection (d) ''shall be in addition and consecutive to any term of imprisonment imposed for violation of subsection (a), (b) or (c) of this section.'' As a result of the merger of the defendant's conviction under § 21a-279 (c) with his conviction under § 21a-277 (b), however, the majority has ordered the trial court ''to vacate the sentence for possession of marijuana in violation of § 21a-279 (c).''

Once the trial court implements that order, therefore, there no longer will be ''any term of imprisonment imposed for violation of subsection . . . (c) of this section'' to which a sentence under subsection (d) could be given ''in addition and [that would be] consecutive.'' General Statutes § 21a-279 (d). The term ''in addition to'' is defined as ''[o]ver and above; besides.'' American

Heritage Dictionary, New College Edition. Both of those definitions, by their terms, envision that there is something else. Thus, any term of imprisonment given to *this* defendant under subsection (d) would not be ''in addition to'' a term of imprisonment under subsection (c) because, by the majority's order, the defendant will receive no term of imprisonment under subsection (c). Furthermore, the term ''consecutive'' is defined as ''[f]ollowing successively without interruption.'' Id. Once again, that definition, by its use of the word ''following,'' requires a fortiori that there be something *leading* the thing that is following consecutively without interruption. Thus, any term of imprisonment given to *this* defendant would not be ''consecutive'' to a term of imprisonment under subsection (c) because, by the majority's order, the defendant will receive no term of imprisonment under subsection (c).

The *only* term of imprisonment to which a sentence under § 21a-279 (d) could run ''in addition and consecutive'' is the defendant's sentence under § 21a-277 (b). The language of subsection (d) forecloses, however, the possibility of having any sentence under subsection (d) run consecutively to the defendant's sentence under § 21a-277 (b) by stating that the sentence shall be ''in addition and consecutive to any term of imprisonment imposed for violation of subsection (a), (b) or (c) *of this section*.'' (Emphasis added.) General Statutes § 21a-279 (d). By the terms of § 21a-279 (d), therefore, the additional two years incarceration that subsection provides for cannot be appended onto sentences for any crimes other than those specified in subsections (a), (b) or (c) of § 21a-279.

This court also has previously held that when a conviction for possession within 1500 feet of a school is merged into another conviction, although the merged conviction stands, the additional sentence on the merged conviction is not imposed. See *State* v. *Rivera*, 56 Conn. App. 182, 190, 742 A.2d 387 (improper for court to impose sentences on merged offenses), cert. denied, 252 Conn. 927, 746 A.2d 791 (1999).

I would conclude, therefore, that far from supporting the majority's decision, the language of § 21a-279 (d) precludes the majority from permitting the imposition of a sentence under subsection (d). The merger of the conviction for violating §§ 21a-279 (c) and 21a-277 (b) leaves no sentence to which a sentence under § 21a-279 (d) could run in addition to and to which it could run consecutively, as the language of that subsection requires.

B

The majority also asserts that its conclusion that § 21a-279 (d) sets forth a separate crime is consistent with the legislative history of that subsection. See footnote 12 of the majority opinion. Legislative history is

an excellent tool to employ when engaging in statutory construction. "The . . . legislative history of a statute can provide evidence of [legislative] intent." *State* v. *Greco*, supra, 216 Conn. 293. The legislative history of § 21a-279 (d), however, does not clearly indicate, contrary to the majority's conclusion, that the legislature was attempting to create a separate crime when it drafted subsection (d).

As the majority correctly notes, subsection (d) was added to § 21a-279 in Public Acts 1989, No. 89-256, § 2 (P.A. 89-256). The primary proponent of the bill in the House of Representatives was Representative Douglas C. Mintz. He explained the purpose of subsection (d) as follows: "It . . . imposes a mandatory two year *add-on* sentence for anyone who possess[es] drugs within [1000] feet of a school yard."[1] (Emphasis added.) 32 H.R. Proc., Pt. 11, 1989 Sess., p. 3848, remarks of Representative Douglas C. Mintz.

Other persons involved with the passage of P.A. 89-256 also used similar language in reference to subsection (d) of § 21a-279. Michael Pacowta, the mayor of Shelton at the time, testified before the judiciary committee that the bill would "establish an *additional penalty* for the illegal possession of drugs . . . near school grounds." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 4, 1989 Sess., p. 1219. The Connecticut Association of Boards of Education, Inc., submitted written testimony to the committee in which it stated that the organization "supports . . . additional penalties for the illegal possession of drugs . . . near school grounds." Id., 1390. Finally, in the discussion of the bill in the Senate, Senator John Atkin remarked that it would provide an "extra sentence" for possession near a school. 32 S. Proc., Pt. 10, 1989 Sess., p. 3606. The terms "add-on," "additional penalty" and "extra sentence" are much closer in meaning to "sentence enhancement" than they are to "separate crime."

C

In addition to the statutory language and the relevant legislative history, there is a further reason why I believe that § 21a-279 (d) should be interpreted to be a sentence enhancement rather than a separate crime. Both we and the Supreme Court have interpreted a statute using nearly identical language to be a sentence enhancement rather than a separate crime, specifically General Statutes § 53-202k, which concerns firearms in the commission of a felony.

General Statutes § 53-202k provides in relevant part: "Any person who commits any class A, B or C felony and in the commission of such felony uses, or is armed with and threatens the use of, or displays, or represents by his words or conduct that he possesses any firearm . . . shall be imprisoned for a term of five years, which shall not be suspended or reduced and shall be in addi-

tion and consecutive to any term of imprisonment imposed for conviction of such felony.'' That language is strikingly similar to that contained in § 21a-279 (d). Both provide that any person who commits a specified violation of law (subsection (a), (b) or (c) in the latter case, and any class A, B or C felony in the former) in a specified manner (within 1500 feet of a school in the latter case, and with a firearm in the former) shall be imprisoned for a term ''which shall not be suspended and shall be in addition and consecutive to any term of imprisonment imposed for'' the original violation. Both statutes use the exact quoted language except that § 53-202k includes the words ''or reduced'' after the word ''suspended.''

The near identity of language used in the two statutes compels the conclusion that the legislature had the same purposes in mind when it passed the legislation that created those statutes. ''When a statute does not define a phrase, we look elsewhere for the peculiar and appropriate meaning of the phrase. We may look to the meaning given the phrase in unrelated statutes and consider that where the legislature uses the same phrase it intends the same meaning. See *Link* v. *Shelton*, 186 Conn. 623, 627, 443 A.2d 902 (1982).'' *State* v. *Vega*, 44 Conn. App. 499, 503, 691 A.2d 22, cert. denied, 240 Conn. 930, 693 A.2d 302 (1997).

Both this court and our Supreme Court have held on several occasions that § 53-202k is not a separate crime, but is, instead, a sentence enhancement statute. See, e.g., *State* v. *Davis*, 255 Conn. 782, 792, 772 A.2d 559 (2001) (''§ 53-202k is a sentence enhancement provision rather than a separate and distinct offense''); *State* v. *Dash*, 242 Conn. 143, 148, 698 A.2d 297 (1997) (''review of the relevant legislative history persuades us that § 53-202k was intended to serve as a sentence enhancement provision''); *State* v. *Price*, 61 Conn. App. 417, 422, 767 A.2d 107 (''court lengthened the defendant's sentence by five years by applying the sentence enhancement provision . . . [of] § 53-202k''), cert. denied, 255 Conn. 947, 769 A.2d 64 (2001); *State* v. *Brown*, 60 Conn. App. 487, 497, 760 A.2d 111 (''sentence enhancement provision set forth in § 53-202k''), cert. granted on other grounds, 255 Conn. 905, 762 A.2d 910 (2000). Because our courts have concluded beyond question that the legislature intended § 53-202k to be a sentence enhancement, I believe that in light of the legislature's having used virtually identical language in § 21a-279 (d), we may properly infer that the legislature had a virtually identical intent, namely, that § 21a-279 (d) would be a sentence enhancement and not a separate crime.[2]

II

Having concluded that the legislature intended § 21a-279 (d) to be a sentence enhancement rather than a separate crime, I write also to address an issue that the majority does not reach by its conclusion that § 21a-

279 (d) is a separate crime. That issue is the effect of the majority's holding, with which I agree, that the defendant's conviction under § 21a-279 (c) merges with his conviction under § 21a-277 (b). Because the merger doctrine, as explained by the majority, precludes the defendant from being punished for the lesser offense when he also was convicted of the greater offense, I believe that the result of that merger is that there is no sentence that § 21a-279 (d) can enhance.

"In *State* v. *Chicano*, [supra, 216 Conn. 723], our Supreme Court held that when a defendant is convicted of both greater and lesser offenses arising from a single transaction, the trial court is to combine the conviction on the lesser offense with the conviction on the greater offense and to vacate only the *sentence* of the lesser offense. . . . A conviction on a lesser offense will, in effect, *not exist separately* as long as the conviction on the greater offense remains intact." (Emphasis added; internal quotation marks omitted.) *State* v. *Little*, 54 Conn. App. 580, 586, 738 A.2d 195 (1999). Applied to this case, the Supreme Court's holding in *Chicano* dictates that the sentence for the lesser offense, namely, § 21a-279 (c) (possession of narcotics), enhanced as it was by the application of § 21a-279 (d) (enhancing the penalty for violation of subsections (a), (b) and (c) within 1500 feet of a school), should be vacated, and only the sentence for the greater offense, namely, § 21a-277 (b) (possession of narcotics with intent to sell) can remain. As we stated in *Little*, the defendant's conviction for possession of narcotics in violation of § 21a-279 (c) "will, in effect, not exist separately as long as the conviction on the greater offense remains intact." Id.

I therefore believe that our Supreme Court's holding in *Chicano* and our holding in *Little*, taken together, dictate that the defendant in this case can neither be sentenced separately under § 21a-279 (d) nor have his sentence enhanced by operation of that statute. I would, therefore, go beyond the majority's conclusion and order that the defendant's additional sentence for possession of narcotics within 1500 feet of a school also should be vacated and that the defendant should be resentenced on the sole offense of possession of marijuana with intent to sell.

I respectfully dissent.

[1] Public Acts, Spec. Sess., June, 1992, No. 92-1, § 4, substituted 1500 feet for the original 1000 feet, creating the 1500 foot area applicable to this case.

[2] I note that had the state charged the defendant instead with possession of narcotics with intent to sell within 1500 feet of a school pursuant to General Statutes § 21a-278a (b), I would have no difficulty agreeing that a conviction under that statute constitutes a separate offense and not a sentence enhancement. This court has held that the legislature intended that statute to set forth a separate offense. See *State* v. *Player*, 58 Conn. App. 592, 596–97, 753 A.2d 947 (2000), noting that this conclusion is supported by our Supreme Court's decision in *State* v. *Denby*, 235 Conn. 477, 481, 668 A.2d 682 (1995).