

10069

I N A S S E M B L Y

May 10, 2016

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to criminal diversion of prescription medications and prescriptions, establishing the offense of fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices, and establishing the offense of unlawful possession of non-controlled substance prescription medications and devices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 178.00 of the penal law, as added by chapter 81 of
2 the laws of 1995, is amended to read as follows:
3 S 178.00 Criminal diversion of prescription medications and
4 prescriptions; definitions.
5 The following definitions are applicable to this article:
6 1. "Prescription medication or device" means any article for which a
7 prescription is required in order to be lawfully sold, delivered or
8 distributed by any person authorized by law to engage in the practice of
9 the profession of pharmacy.
10 2. "Prescription" means a direction or authorization by means of a
11 written prescription form, ELECTRONIC PRESCRIPTION or an oral
12 prescription which permits a person to lawfully obtain a prescription
13 medication or device from any person authorized to dispense such
14 prescription medication or device.
15 3. "PRESCRIPTION FORM" MEANS AN OFFICIAL STATE PRESCRIPTION FORM
16 AUTHORIZED BY A STATE FOR USE BY HEALTH PRACTITIONERS AUTHORIZED TO
17 WRITE PRESCRIPTIONS.
18 4. "Criminal diversion act" means an act or acts in which a person
19 knowingly:
20 (a) transfers or delivers, in exchange for anything of pecuniary
21 value, a prescription medication or device with knowledge or reasonable
22 grounds to know that the recipient has no medical need for it; or
23 (b) receives, in exchange for anything of pecuniary value, a
24 prescription medication or device with knowledge or reasonable grounds

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

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1 to know that the seller or transferor is not authorized by law to sell
2 or transfer such prescription medication or device; or

3 (c) RECEIVES, IN EXCHANGE FOR ANYTHING OF PECUNIARY VALUE, A
4 PRESCRIPTION MEDICATION OR DEVICE, PRESCRIPTION, OR PRESCRIPTION FORM
5 FROM A LAW ENFORCEMENT OFFICER ACTING IN AN UNDERCOVER CAPACITY OR HIS
6 OR HER AGENT, BELIEVING OR HAVING REASONABLE GROUND TO BELIEVE THAT THE
7 OFFICER OR HIS OR HER AGENT IS SOMEONE WHO IS NOT AUTHORIZED BY LAW TO
8 SELL OR TRANSFER SUCH PRESCRIPTION MEDICATION OR DEVICE, PRESCRIPTION,
9 OR PRESCRIPTION FORM; OR

10 (D) transfers or delivers a prescription OR PRESCRIPTION FORM in
11 exchange for anything of pecuniary value; or

12 [(d)] (E) receives a prescription OR PRESCRIPTION FORM in exchange for
13 anything of pecuniary value.

14 S 2. Paragraph (c) of subdivision 1 of section 178.05 of the penal
15 law, as added by chapter 81 of the laws of 1995, is amended and two new
16 paragraphs (d) and (e) are added to read as follows:

17 (c) a person acting in good faith WHO IS seeking [treatment for a
18 medical condition or assisting another person to obtain treatment for a
19 medical condition] TO OBTAIN A PRESCRIPTION, PRESCRIPTION MEDICATION OR
20 DEVICE THAT HAS BEEN LAWFULLY PRESCRIBED TO HIM OR HER, AND FOR WHICH HE
21 OR SHE HAS A MEDICAL NEED; OR

22 (D) A PERSON ACTING IN GOOD FAITH, WHO REASONABLY BELIEVES THAT HE OR
23 SHE IS ASSISTING ANOTHER PERSON TO OBTAIN A PRESCRIPTION, PRESCRIPTION
24 MEDICATION OR DEVICE THAT HAS BEEN LAWFULLY PRESCRIBED TO THAT OTHER
25 PERSON; OR

26 (E) A DULY REGISTERED MANUFACTURER OR WHOLESALE OF DRUGS, AS DEFINED
27 IN ARTICLE ONE HUNDRED THIRTY-SEVEN OF THE EDUCATION LAW, ACTING IN GOOD
28 FAITH IN THE LAWFUL COURSE OF HIS OR HER BUSINESS.

29 S 3. Section 178.10 of the penal law, as added by chapter 81 of the
30 laws of 1995, is amended to read as follows:

31 S 178.10 Criminal diversion of prescription medications and
32 prescriptions in the [fourth] FIFTH degree.

33 A person is guilty of criminal diversion of prescription medications
34 and prescriptions in the [fourth] FIFTH degree when he or she commits a
35 criminal diversion act.

36 Criminal diversion of prescription medications and prescriptions in
37 the [fourth] FIFTH degree is a class A misdemeanor.

38 S 4. Section 178.15 of the penal law, as added by chapter 81 of the
39 law of 1995, is amended to read as follows:

40 S 178.15 Criminal diversion of prescription medications and
41 prescriptions in the [third] FOURTH degree.

42 A person is guilty of criminal diversion of prescription medications
43 and prescriptions in the [third] FOURTH degree when he or she:

44 1. commits a criminal diversion act, and the value of the benefit
45 exchanged is in excess of one thousand dollars; or

46 2. commits the crime of criminal diversion of prescription medications
47 and prescriptions in the [fourth] FIFTH degree, and has previously been
48 convicted of [the crime of criminal diversion of prescription medica-
49 tions and prescriptions in the fourth degree] AN OFFENSE DEFINED IN THIS
50 ARTICLE; OR

51 3. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
52 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON TWO OR MORE OCCASIONS OVER A
53 THIRTY-FIVE DAY PERIOD.

54 Criminal diversion of prescription medications and prescriptions in
55 the [third] FOURTH degree is a class E felony.

1 S 5. Section 178.20 of the penal law, as added by chapter 81 of the
2 laws of 1995, is amended to read as follows:

3 S 178.20 Criminal diversion of prescription medications and
4 prescriptions in the [second] THIRD degree.

5 A person is guilty of criminal diversion of prescription medications
6 and prescriptions in the [second] THIRD degree when he or she:

7 1. commits a criminal diversion act, and the value of the benefit
8 exchanged is in excess of three thousand dollars; OR

9 2. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
10 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON FOUR OR MORE OCCASIONS OVER A
11 THIRTY-FIVE DAY PERIOD; OR

12 3. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICA-
13 TIONS AND PRESCRIPTIONS IN THE FIFTH DEGREE, AND IS:

14 (A) A PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION; OR

15 (B) A PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE PRESCRIPTION
16 MEDICATIONS AND DEVICES.

17 Criminal diversion of prescription medications and prescriptions in
18 the [second] THIRD degree is a class D felony.

19 S 6. Section 178.25 of the penal law, as added by chapter 81 of the
20 laws of 1995, is amended to read as follows:

21 S 178.25 Criminal diversion of prescription medications and
22 prescriptions in the [first] SECOND degree.

23 A person is guilty of criminal diversion of prescription medications
24 and prescriptions in the [first] SECOND degree when he or she:

25 1. commits a criminal diversion act, and the value of the benefit
26 exchanged is in excess of fifty thousand dollars; OR

27 2. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
28 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON SIX OR MORE OCCASIONS OVER A
29 THIRTY-FIVE DAY PERIOD; OR

30 3. COMMITS THE CRIME OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
31 AND PRESCRIPTIONS IN THE FIFTH DEGREE ON TWO OR MORE OCCASIONS OVER A
32 NINETY DAY PERIOD, AND IS:

33 (A) A PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION; OR

34 (B) A PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE PRESCRIPTION
35 MEDICATIONS AND DEVICES.

36 Criminal diversion of prescription medications and prescriptions in
37 the [first] SECOND degree is a class C felony.

38 S 7. The penal law is amended by adding a new section 178.30 to read
39 as follows:

40 S 178.30 CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS AND
41 PRESCRIPTIONS IN THE FIRST DEGREE.

42 A PERSON IS GUILTY OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
43 AND PRESCRIPTIONS IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME
44 OF CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS OR PRESCRIPTIONS IN
45 THE FIFTH DEGREE ON FIVE OR MORE OCCASIONS OVER A NINETY DAY PERIOD, AND
46 IS:

47 (A) A PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION; OR

48 (B) A PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE PRESCRIPTION
49 MEDICATIONS AND DEVICES.

50 CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS AND PRESCRIPTIONS IN
51 THE FIRST DEGREE IS A CLASS B FELONY.

52 S 8. The penal law is amended by adding a new article 178-A to read as
53 follows:

54 ARTICLE 178-A

55 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
56 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES

1 SECTION 178.50 DEFINITIONS.

2 178.55 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
3 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND
4 DEVICES IN THE THIRD DEGREE.

5 178.60 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
6 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND
7 DEVICES IN THE SECOND DEGREE.

8 178.65 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
9 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND
10 DEVICES IN THE FIRST DEGREE.

11 S 178.50 DEFINITIONS.

12 THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

13 1. "PRESCRIPTION MEDICATION OR DEVICE" MEANS ANY ARTICLE FOR WHICH A
14 PRESCRIPTION IS REQUIRED IN ORDER TO BE LAWFULLY SOLD, DELIVERED OR
15 DISTRIBUTED BY ANY PERSON AUTHORIZED BY LAW TO ENGAGE IN THE PRACTICE OF
16 THE PROFESSION OF PHARMACY.

17 2. "PRESCRIPTION" MEANS A DIRECTION OR AUTHORIZATION BY MEANS OF A
18 WRITTEN PRESCRIPTION FORM, AN ELECTRONIC PRESCRIPTION OR AN ORAL
19 PRESCRIPTION WHICH PERMITS A PERSON TO LAWFULLY OBTAIN A PRESCRIPTION
20 MEDICATION OR DEVICE FROM ANY PERSON AUTHORIZED TO DISPENSE SUCH
21 PRESCRIPTION MEDICATION OR DEVICE.

22 3. "CONTROLLED SUBSTANCE" MEANS ANY SUBSTANCE LISTED IN SCHEDULE I,
23 II, III, IV OR V OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC
24 HEALTH LAW OTHER THAN MARIHUANA, BUT INCLUDING CONCENTRATED CANNABIS AS
25 DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION THIRTY-THREE
26 HUNDRED TWO OF SUCH LAW.

27 4. "DISPENSING" AND "DISPENSES" REFER TO THE DISPENSING OF A
28 PRESCRIPTION MEDICATION OR DEVICE FROM OR WITHIN A PHARMACY, HOSPITAL,
29 PHYSICIAN'S OFFICE, CLINIC OR OTHER PHARMACEUTICAL OR MEDICAL FACILITY.

30 S 178.55 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
31 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES
32 IN THE THIRD DEGREE.

33 A PERSON IS GUILTY OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCURE-
34 MENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN
35 THE THIRD DEGREE WHEN HE OR SHE:

36 1. ISSUES A WRITTEN, ELECTRONIC OR ORAL PRESCRIPTION FOR A NON-CONT-
37 ROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE, AND IS NOT A DULY
38 LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH
39 PRESCRIPTION; OR

40 2. DISPENSES A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR
41 DEVICE, WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT:

42 (A) THE PERSON FOR WHOM THE MEDICATION OR DEVICE HAS BEEN PRESCRIBED
43 HAS NO MEDICAL NEED FOR SUCH MEDICATION OR DEVICE; OR

44 (B) NO PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A DULY
45 LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH
46 PRESCRIPTION; OR

47 (C) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS FORGED; OR

48 (D) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A
49 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH
50 PRESCRIPTION WHO WAS ACTING OTHER THAN IN GOOD FAITH IN THE LAWFUL
51 COURSE OF HIS OR HER PROFESSIONAL PRACTICE; OR

52 3. PRESENTS OR SUBMITS A PRESCRIPTION FOR A NON-CONTROLLED SUBSTANCE
53 PRESCRIPTION MEDICATION OR DEVICE TO, OR RECEIVES A NON-CONTROLLED
54 SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE FROM, A DULY LICENSED PHAR-
55 MACIST OR OTHER PERSON AUTHORIZED TO DISPENSE SUCH PRESCRIPTION MEDICA-
56 TION OR DEVICE, WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT:

1 (A) THE PERSON FOR WHOM THE MEDICATION OR DEVICE HAS BEEN PRESCRIBED
2 HAS NO MEDICAL NEED FOR SUCH MEDICATION OR DEVICE; OR

3 (B) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS NOT ISSUED BY A
4 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH
5 PRESCRIPTION; OR

6 (C) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS FORGED; OR

7 (D) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A
8 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH
9 PRESCRIPTION WHO WAS ACTING OTHER THAN IN GOOD FAITH IN THE LAWFUL
10 COURSE OF HIS OR HER PROFESSIONAL PRACTICE.

11 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED
12 SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE IS A
13 CLASS D FELONY.

14 S 178.60 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
15 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES
16 IN THE SECOND DEGREE.

17 A PERSON IS GUILTY OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCURE-
18 MENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN
19 THE SECOND DEGREE WHEN HE OR SHE:

20 1. BEING A DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE
21 A PRESCRIPTION, ISSUES A WRITTEN, ELECTRONIC OR ORAL PRESCRIPTION FOR A
22 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE, OR DISPENSES
23 A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE:

24 (A) WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT THE PERSON FOR
25 WHOM THE PRESCRIPTION IS ISSUED, OR TO WHOM THE MEDICATION IS DISPENSED,
26 HAS NO MEDICAL NEED FOR THE MEDICATION OR DEVICE THAT IS BEING
27 PRESCRIBED; OR

28 (B) OTHER THAN IN GOOD FAITH IN THE LAWFUL COURSE OF HIS OR HER
29 PROFESSIONAL PRACTICE; OR

30 2. BEING A DULY LICENSED PHARMACIST OR OTHER PERSON AUTHORIZED TO
31 DISPENSE A PRESCRIPTION MEDICATION OR DEVICE, DISPENSES A NON-CONTROLLED
32 SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE:

33 (A) WITH KNOWLEDGE OR REASONABLE GROUNDS TO KNOW THAT:

34 (I) THE PERSON FOR WHOM THE MEDICATION OR DEVICE HAS BEEN PRESCRIBED
35 HAS NO MEDICAL NEED FOR SUCH MEDICATION OR DEVICE; OR

36 (II) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS NOT ISSUED BY
37 A DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH
38 PRESCRIPTION; OR

39 (III) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS FORGED; OR

40 (IV) THE PRESCRIPTION FOR SUCH MEDICATION OR DEVICE WAS ISSUED BY A
41 DULY LICENSED PHYSICIAN OR OTHER PERSON AUTHORIZED TO ISSUE SUCH
42 PRESCRIPTION WHO WAS ACTING OTHER THAN IN GOOD FAITH IN THE LAWFUL
43 COURSE OF HIS OR HER PROFESSIONAL PRACTICE; OR

44 (B) OTHER THAN IN GOOD FAITH, IN THE COURSE OF HIS OR HER LAWFUL
45 PROFESSIONAL PRACTICE.

46 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED
47 SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE SECOND DEGREE IS A
48 CLASS C FELONY.

49 S 178.65 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
50 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES
51 IN THE FIRST DEGREE.

52 A PERSON IS GUILTY OF FRAUDULENT PRESCRIPTION, DISPENSING AND PROCURE-
53 MENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN
54 THE FIRST DEGREE WHEN HE OR SHE, BEING EITHER A DULY LICENSED PHYSICIAN
55 OR OTHER PERSON AUTHORIZED TO ISSUE A PRESCRIPTION, OR A DULY LICENSED
56 PHARMACIST OR OTHER PERSON AUTHORIZED TO DISPENSE A PRESCRIPTION MEDICA-

1 TION OR DEVICE, COMMITS THE CRIME OF FRAUDULENT PRESCRIPTION, DISPENSING
2 AND PROCUREMENT OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND
3 DEVICES IN THE SECOND DEGREE ON TWO OR MORE OCCASIONS WITHIN A NINETY
4 DAY PERIOD.

5 FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF NON-CONTROLLED
6 SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST DEGREE IS A
7 CLASS B FELONY.

8 S 9. Title M of the penal law is amended by adding a new article 219
9 to read as follows:

10 ARTICLE 219

11 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION
12 MEDICATIONS AND DEVICES

13 SECTION 219.00 DEFINITIONS.

14 219.05 LIMITATIONS ON APPLICATION OF ARTICLE.

15 219.10 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
16 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH
17 DEGREE.

18 219.15 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
19 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FOURTH
20 DEGREE.

21 219.20 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
22 PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD
23 DEGREE.

24 219.25 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
25 PRESCRIPTION MEDICATIONS AND DEVICES IN THE SECOND
26 DEGREE.

27 219.30 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
28 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST
29 DEGREE.

30 S 219.00 DEFINITIONS.

31 THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

32 1. "PRESCRIPTION MEDICATION OR DEVICE" MEANS ANY ARTICLE FOR WHICH A
33 PRESCRIPTION IS REQUIRED IN ORDER TO BE LAWFULLY SOLD, DELIVERED OR
34 DISTRIBUTED BY ANY PERSON AUTHORIZED BY LAW TO ENGAGE IN THE PRACTICE OF
35 THE PROFESSION OF PHARMACY.

36 2. "PRESCRIPTION" MEANS A DIRECTION OR AUTHORIZATION BY MEANS OF A
37 WRITTEN PRESCRIPTION FORM, AN ELECTRONIC PRESCRIPTION OR AN ORAL
38 PRESCRIPTION WHICH PERMITS A PERSON TO LAWFULLY OBTAIN A PRESCRIPTION
39 MEDICATION OR DEVICE FROM ANY PERSON AUTHORIZED TO DISPENSE SUCH
40 PRESCRIPTION MEDICATION OR DEVICE.

41 3. "CONTROLLED SUBSTANCE" MEANS ANY SUBSTANCE LISTED IN SCHEDULE I,
42 II, III, IV OR V OF SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC
43 HEALTH LAW OTHER THAN MARIHUANA, BUT INCLUDING CONCENTRATED CANNABIS AS
44 DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION THIRTY-THREE
45 HUNDRED TWO OF SUCH LAW.

46 4. THE VALUE OF A PRESCRIPTION MEDICATION OR DEVICE SHALL BE EQUIV-
47 ALENT TO THE FAIR MARKET VALUE OF SUCH MEDICATION OR DEVICE ON THE
48 LAWFUL RETAIL MARKET, AT ABOUT THE TIME AND PLACE THAT THE CRIME IS
49 COMMITTED.

50 S 219.05 LIMITATIONS ON APPLICATION OF ARTICLE.

51 THE PROVISIONS OF THIS ARTICLE RESTRICTING THE UNLAWFUL POSSESSION OF
52 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES SHALL NOT
53 APPLY:

54 1. TO COMMON CARRIERS OR TO WAREHOUSEMEN, WHILE ENGAGED IN LAWFULLY
55 TRANSPORTING OR STORING SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDI-

1 CATIONS AND DEVICES, OR TO ANY EMPLOYEE OF THE SAME ACTING WITHIN THE
2 SCOPE OF HIS OR HER EMPLOYMENT; OR

3 2. TO PUBLIC OFFICERS OR THEIR EMPLOYEES IN THE LAWFUL PERFORMANCE OF
4 THEIR OFFICIAL DUTIES REQUIRING THE POSSESSION OR CONTROL OF SUCH
5 NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES; OR

6 3. TO TEMPORARY INCIDENTAL POSSESSION BY EMPLOYEES OR AGENTS OF
7 PERSONS LAWFULLY ENTITLED TO POSSESS SUCH NON-CONTROLLED SUBSTANCE
8 PRESCRIPTION MEDICATIONS AND DEVICES, OR BY PERSONS WHOSE POSSESSION IS
9 FOR THE PURPOSE OF AIDING PUBLIC OFFICERS IN PERFORMING THEIR OFFICIAL
10 DUTIES; OR

11 4. TO A DULY LICENSED PHYSICIAN, DULY LICENSED PHARMACIST OR OTHER
12 PERSON AUTHORIZED TO POSSESS OR DISPENSE SUCH NON-CONTROLLED SUBSTANCE
13 PRESCRIPTION MEDICATIONS AND DEVICES, ACTING IN GOOD FAITH IN THE LAWFUL
14 COURSE OF HIS OR HER PROFESSION; OR

15 5. TO TEMPORARY INCIDENTAL POSSESSION BY A PERSON ACTING IN GOOD FAITH
16 WHO REASONABLY BELIEVES THAT HE OR SHE IS ASSISTING ANOTHER PERSON TO
17 OBTAIN A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATION OR DEVICE THAT
18 HAS BEEN LAWFULLY PRESCRIBED TO THAT OTHER PERSON.

19 S 219.10 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION
20 MEDICATIONS AND DEVICES IN THE FIFTH DEGREE.

21 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
22 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH DEGREE WHEN SUCH
23 PERSON KNOWINGLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE
24 PRESCRIPTION MEDICATIONS OR DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED
25 TO HIM OR HER, UNDER CIRCUMSTANCES EVINCING AN INTENT TO SELL THE SAME;
26 AND

27 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION
28 MEDICATIONS AND DEVICES EXCEEDS TWO HUNDRED DOLLARS; OR

29 2. HE OR SHE POSSESSES TWENTY OR MORE PILLS, TABLETS OR CAPSULES OF
30 SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES.

31 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-
32 TIONS AND DEVICES IN THE FIFTH DEGREE IS A CLASS A MISDEMEANOR.

33 S 219.15 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION
34 MEDICATIONS AND DEVICES IN THE FOURTH DEGREE.

35 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
36 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FOURTH DEGREE WHEN HE OR SHE
37 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE
38 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED
39 TO HIM OR HER; AND

40 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION
41 MEDICATIONS AND DEVICES EXCEEDS FIVE HUNDRED DOLLARS; OR

42 2. HE OR SHE POSSESSES FIFTY OR MORE PILLS, TABLETS OR CAPSULES OF
43 SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES; OR

44 3. HE OR SHE POSSESSES A NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-
45 TION OR DEVICE WITH AN INTENT TO SELL IT; OR

46 4. HE OR SHE COMMITS THE CRIME OF UNLAWFUL POSSESSION OF NON-CONT-
47 ROLLED PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIFTH DEGREE, AND HAS
48 PREVIOUSLY BEEN CONVICTED OF AN OFFENSE DEFINED IN THIS ARTICLE.

49 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-
50 TIONS AND DEVICES IN THE FOURTH DEGREE IS A CLASS E FELONY.

51 S 219.20 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION
52 MEDICATIONS AND DEVICES IN THE THIRD DEGREE.

53 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
54 PRESCRIPTION MEDICATIONS AND DEVICES IN THE THIRD DEGREE WHEN HE OR SHE
55 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE

1 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED
2 TO HIM OR HER; AND

3 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION
4 MEDICATIONS AND DEVICES EXCEEDS FIFTEEN HUNDRED DOLLARS; OR

5 2. HE OR SHE POSSESSES ONE HUNDRED FIFTY OR MORE PILLS, TABLETS OR
6 CAPSULES OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND
7 DEVICES.

8 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-
9 TIONS AND DEVICES IN THE THIRD DEGREE IS A CLASS D FELONY.

10 S 219.25 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION
11 MEDICATIONS AND DEVICES IN THE SECOND DEGREE.

12 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
13 PRESCRIPTION MEDICATIONS AND DEVICES IN THE SECOND DEGREE WHEN HE OR SHE
14 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE
15 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED
16 TO HIM OR HER; AND

17 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION
18 MEDICATIONS AND DEVICES EXCEEDS TEN THOUSAND DOLLARS; OR

19 2. HE OR SHE POSSESSES ONE THOUSAND OR MORE PILLS, TABLETS OR CAPSULES
20 OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES.

21 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-
22 TIONS AND DEVICES IN THE SECOND DEGREE IS A CLASS C FELONY.

23 S 219.30 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION
24 MEDICATIONS AND DEVICES IN THE FIRST DEGREE.

25 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE
26 PRESCRIPTION MEDICATIONS AND DEVICES IN THE FIRST DEGREE WHEN HE OR SHE
27 KNOWINGLY AND UNLAWFULLY POSSESSES ONE OR MORE NON-CONTROLLED SUBSTANCE
28 PRESCRIPTION MEDICATIONS AND DEVICES WHICH WERE NOT LAWFULLY PRESCRIBED
29 TO HIM OR HER; AND

30 1. THE AGGREGATE VALUE OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION
31 MEDICATIONS AND DEVICES EXCEEDS ONE HUNDRED THOUSAND DOLLARS; OR

32 2. HE OR SHE POSSESSES TEN THOUSAND OR MORE PILLS, TABLETS OR CAPSULES
33 OF SUCH NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES.

34 UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICA-
35 TIONS AND DEVICES IN THE FIRST DEGREE IS A CLASS B FELONY.

36 S 10. This act shall take effect on the ninetieth day after it shall
37 have become a law.