

STATE OF NEW YORK

9656

IN ASSEMBLY

January 30, 2018

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

AN ACT to amend the penal law, in relation to establishing certain offenses based on homicide due to criminal sale of a controlled substance, establishing the offense of criminal sale of a controlled substance to a child in the first degree, expanding the definition of controlled substances with respect to certain offenses, increasing the felony classification of certain controlled substance offenses and including electronic prescriptions and blank prescription forms in the definition of certain controlled substance offenses

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 three new sections
2 125.28, 125.29 and 125.30 to read as follows:

3 § 125.28 Homicide due to criminal sale of a controlled substance in the
4 third degree.

5 A person is guilty of homicide due to criminal sale of a controlled
6 substance in the third degree when he or she:

7 1. Commits the offense of: (a) (i) criminal sale of a controlled
8 substance in the fifth degree as defined in section 220.31 of this chap-
9 ter; (ii) criminal sale of a controlled substance in the fourth degree
10 as defined in section 220.34 of this chapter; (iii) criminal sale of a
11 controlled substance in the third degree as defined in section 220.39 of
12 this chapter; (iv) criminal sale of a controlled substance in the second
13 degree as defined in section 220.41 of this chapter; or (v) criminal
14 sale of a controlled substance in the first degree as defined in section
15 220.43 of this chapter; and

16 (b) the controlled substance sold causes, or contributes to, the death
17 of the person to whom the controlled substance was sold.

18 2. It shall be a rebuttable presumption that the controlled substance
19 sold pursuant to subdivision one of this section caused or contributed
20 to the death of the person where the type of controlled substance sold,
21 alone or in combination with other substances, is determined to be the

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

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1 cause of death of the person when the death occurs within twenty-four
2 hours of the sale.

3 3. The provisions of article two hundred sixteen of the criminal
4 procedure law shall not apply to a violation of this section. Nothing
5 contained in this section shall prevent the court from sentencing a
6 person convicted under this section to any other sentence authorized by
7 law under articles sixty-five and seventy of this chapter.

8 4. Where a person (hereinafter "seller") violates the provisions of
9 paragraph (a) of subdivision one of this section but the seller, in good
10 faith, sought health care for the other person whose death resulted from
11 the ingestion of the controlled substance sold, while that other person
12 was experiencing the drug or alcohol overdose or other life threatening
13 medical emergency that led to that person's death, the seller shall not
14 be charged or prosecuted under this section or article two hundred twenty
15 of this chapter when the sale was not for consideration or other
16 benefit or gain.

17 5. It shall be an affirmative defense to a violation of this section
18 or a violation of article two hundred twenty of this chapter where a
19 seller violates paragraph (a) of subdivision one of this section and the
20 sale was for consideration or other benefit or gain, but the seller, in
21 good faith, sought health care for the other person whose death resulted
22 from the ingestion of the controlled substance sold, while that other
23 person was experiencing a drug or alcohol overdose or other life threat-
24 ening medical emergency that led to that person's death, and the defend-
25 ant has no prior conviction for the commission or attempted commission
26 of a class A-I, A-II or B felony under article two hundred twenty of
27 this chapter.

28 Homicide due to criminal sale of a controlled substance in the third
29 degree is a class D felony.

30 § 125.29 Homicide due to criminal sale of a controlled substance in the
31 second degree.

32 A person is guilty of homicide due to criminal sale of a controlled
33 substance in the second degree when he or she:

34 1. Commits the offense of: (a) (i) criminal sale of a controlled
35 substance in the fifth degree as defined in section 220.31 of this chap-
36 ter; (ii) criminal sale of a controlled substance in the fourth degree
37 as defined in section 220.34 of this chapter; (iii) criminal sale of a
38 controlled substance in the third degree as defined in section 220.39 of
39 this chapter; (iv) criminal sale of a controlled substance in the second
40 degree as defined in section 220.41 of this chapter; or (v) criminal
41 sale of a controlled substance in the first degree as defined in section
42 220.43 of this chapter; and

43 (b) the controlled substance sold causes, or contributes, to the death
44 of the person to whom the controlled substance was sold; and

45 (c) (i) an additional substance was added to the controlled substance
46 sold which enhances the effects of the controlled substance and/or
47 increases the danger of ingestion; or

48 (ii) the person to whom the controlled substance was sold was impaired
49 by one or more substances at the time of the sale; or

50 (iii) the person knew, or had reason to know, that the person to whom
51 the controlled substance was sold was using, or intended to use, one or
52 more other substances in conjunction with the controlled substance sold;
53 or

54 (iv) the person knew, or had reason to know, that the person to whom
55 the controlled substance was sold had completed a rehabilitation
56 program, or overdosed, within thirty days of the sale.

2. It shall be a rebuttable presumption that the controlled substance sold pursuant to subdivision one of this section caused or contributed to the death of the person where the type of controlled substance sold, alone or in combination with other substances, is determined to be the cause of death of the person when the death occurs within twenty-four hours of the sale.

3. The provisions of article two hundred sixteen of the criminal procedure law shall not apply to a violation of this section. Nothing contained in this section shall prevent the court from sentencing a person convicted under this section to any other sentence authorized by law under articles sixty-five and seventy of this chapter.

4. Where a person (hereinafter "seller") violates the provisions of subdivision one of this section but the seller, in good faith, sought health care for the other person whose death resulted from the ingestion of the controlled substance sold, while that other person was experiencing the drug or alcohol overdose or other life threatening medical emergency that led to that person's death, the seller shall not be charged or prosecuted under this section or article two hundred twenty of this chapter when the sale was not for consideration or other benefit or gain.

5. It shall be an affirmative defense to a violation of this section or a violation of article two hundred twenty of this chapter where a seller violates the provisions of subdivision one of this section and the sale was for consideration or other benefit or gain, but the seller, in good faith, sought health care for the other person whose death resulted from the ingestion of the controlled substance sold, while that other person was experiencing a drug or alcohol overdose or other life threatening medical emergency that led to that person's death, and the defendant has no prior conviction for the commission or attempted commission of a class A-I, A-II or B felony under article two hundred twenty of this chapter.

Homicide due to criminal sale of a controlled substance in the second degree is a class C felony.

§ 125.30 Homicide due to criminal sale of a controlled substance in the first degree.

A person is guilty of homicide due to criminal sale of a controlled substance in the first degree when he or she:

1. Commits the offense of criminal sale of a controlled substance to a child in the first degree as defined in section 220.49 of this chapter and the controlled substance sold causes, or contributes, to the death of the person to whom the controlled substance was sold.

2. It shall be a rebuttable presumption that the controlled substance sold pursuant to subdivision one of this section caused or contributed to the death of the person where the type of controlled substance sold, alone or in combination with other substances, is determined to be the cause of death of the person when the death occurs within twenty-four hours of the sale.

3. The provisions of article two hundred sixteen of the criminal procedure law shall not apply to a violation of this section. Nothing contained in this section shall prevent the court from sentencing a person convicted under this section to any other sentence authorized by law under articles sixty-five and seventy of this chapter.

4. It shall be an affirmative defense to a violation of this section or a violation of article two hundred twenty of this chapter where a person (hereinafter "seller") violates subdivision one of this section and the sale was for consideration or other benefit or gain, but the

1 seller, in good faith, sought health care for the other person whose
2 death resulted from the ingestion of the controlled substance sold,
3 while that other person was experiencing a drug or alcohol overdose or
4 other life threatening medical emergency that led to that person's
5 death, and the defendant has no prior conviction for the commission or
6 attempted commission of a class A-I, A-II or B felony under article two
7 hundred twenty of this chapter.

8 Homicide due to criminal sale of a controlled substance in the first
9 degree is a class B felony.

10 § 2. Subdivision 13 of section 220.16 of the penal law, as amended by
11 chapter 75 of the laws of 1995, is amended and a new subdivision 14 is
12 added to read as follows:

13 13. phencyclidine and said phencyclidine weighs one thousand two
14 hundred fifty milligrams or more[-]; or

15 14. one or more preparations, compounds, mixtures or substances
16 containing heroin and said preparations, compounds, mixtures or
17 substances are of an aggregate weight of 1.5 grams or more, or such
18 preparations, compounds, mixtures or substances are packaged in fifty or
19 more containers, packets or "decks".

20 § 3. Subdivision 7 of section 220.18 of the penal law, as amended by
21 chapter 75 of the laws of 1995, is amended and a new subdivision 8 is
22 added to read as follows:

23 7. methadone and said methadone weighs two thousand eight hundred
24 eighty milligrams or more[-]; or

25 8. one or more preparations, compounds, mixtures or substances
26 containing heroin and said preparations, compounds, mixtures or
27 substances are of an aggregate weight of twelve grams or more, or such
28 preparations, compounds, mixtures or substances are packaged in four
29 hundred or more containers, packets or "decks".

30 § 4. Subdivision 2 of section 220.21 of the penal law, as amended by
31 chapter 75 of the laws of 1995, is amended and a new subdivision 3 is
32 added to read as follows:

33 2. methadone and said methadone weighs five thousand seven hundred
34 sixty milligrams or more[-]; or

35 3. one or more preparations, compounds, mixtures or substances
36 containing heroin and said preparations, compounds, mixtures or
37 substances are of an aggregate weight of twenty-four grams or more, or
38 such preparations, compounds, mixtures or substances are packaged in
39 eight hundred or more containers, packets or "decks".

40 § 5. Subdivision 7 of section 220.41 of the penal law, as amended by
41 chapter 75 of the laws of 1995, is amended and a new subdivision 8 is
42 added to read as follows:

43 7. methadone and the methadone weighs three hundred sixty milligrams
44 or more[-]; or

45 8. one or more preparations, compounds, mixtures or substances
46 containing heroin and the preparations, compounds, mixtures or
47 substances are of an aggregate weight of 1.5 grams or more, or such
48 preparations, compounds, mixtures or substances are packaged in fifty or
49 more containers, packets or "decks".

50 § 6. Subdivision 2 of section 220.43 of the penal law, as amended by
51 chapter 75 of the laws of 1995, is amended and a new subdivision 3 is
52 added to read as follows:

53 2. methadone and the methadone weighs two thousand eight hundred
54 eighty milligrams or more[-]; or

55 3. one or more preparations, compounds, mixtures or substances
56 containing heroin and the preparations, compounds, mixtures or

1 substances are of an aggregate weight of six grams or more, or such
2 preparations, mixtures or substances are packaged in two hundred or more
3 containers, packets or "decks".

4 § 7. Section 220.48 of the penal law, as added by section 28 of part
5 AAA of chapter 56 of the laws of 2009, is amended to read as follows:

6 § 220.48 Criminal sale of a controlled substance to a child in the
7 second degree.

8 A person is guilty of criminal sale of a controlled substance to a
9 child in the second degree when, being over twenty-one years old, he or
10 she knowingly and unlawfully sells without consideration or other bene-
11 fit or gain a controlled substance in violation of section 220.34 or
12 220.39 of this article to a person less than seventeen years old.

13 Criminal sale of a controlled substance to a child in the second
14 degree is a class B felony.

15 § 8. The penal law is amended by adding a new section 220.49 to read
16 as follows:

17 § 220.49 Criminal sale of a controlled substance to a child in the first
18 degree.

19 A person is guilty of criminal sale of a controlled substance to a
20 child in the first degree when, being over twenty-one years old, he or
21 she knowingly and unlawfully sells a controlled substance for consider-
22 ation or other benefit or gain in violation of section 220.34 or 220.39
23 of this article to a person less than seventeen years old.

24 Criminal sale of a controlled substance to a child in the first degree
25 is a class A-II felony.

26 § 9. The closing paragraph of section 220.50 of the penal law, as
27 amended by chapter 627 of the laws of 1990, is amended to read as
28 follows:

29 Criminally using drug paraphernalia in the second degree is a class [~~A~~
30 ~~misdemeanor~~] E felony.

31 § 10. Section 220.55 of the penal law, as added by chapter 970 of the
32 laws of 1971, is amended to read as follows:

33 § 220.55 Criminally using drug paraphernalia in the first degree.

34 A person is guilty of criminally using drug paraphernalia in the first
35 degree when he commits the crime of criminally using drug paraphernalia
36 in the second degree and he has previously been convicted of criminally
37 using drug paraphernalia in the second degree.

38 Criminally using drug paraphernalia in the first degree is a class [~~D~~
39 ~~C~~] felony.

40 § 11. Subdivision 15 of section 220.00 of the penal law, as added by
41 chapter 118 of the laws of 1986, is amended to read as follows:

42 15. "Prescription for a controlled substance" means a direction or
43 authorization, by means of an official New York state prescription form,
44 an electronic prescription, a written prescription form or an oral
45 prescription, which will permit a person to lawfully obtain a controlled
46 substance from any person authorized to dispense controlled substances.

47 § 12. Section 220.65 of the penal law, as amended by chapter 31 of the
48 laws of 2014, is amended to read as follows:

49 § 220.65 Criminal sale of a prescription for a controlled substance, a
50 blank prescription form or of a controlled substance by a
51 practitioner or pharmacist.

52 A person is guilty of criminal sale of a prescription for a controlled
53 substance or of a controlled substance by a practitioner or pharmacist
54 when: 1. being a practitioner, as that term is defined in section thir-
55 ty-three hundred two of the public health law, he or she knowingly and
56 unlawfully sells a prescription for a controlled substance or a blank

1 prescription form. For the purposes of this section, a person sells a
2 prescription for a controlled substance unlawfully when he or she does
3 so other than in good faith in the course of his or her professional
4 practice; or

5 2. being a practitioner or pharmacist, as those terms are defined in
6 section thirty-three hundred two of the public health law, he or she,
7 acting other than in good faith, while purporting to act within the
8 scope of the power, authority and privileges of his or her license, as
9 that term is defined in section thirty-three hundred two of the public
10 health law, knowingly and unlawfully sells a controlled substance or a
11 blank prescription form.

12 Criminal sale of a prescription for a controlled substance or of a
13 controlled substance by a practitioner or pharmacist is a class [C] B
14 felony.

15 § 13. This act shall take effect on the first of November next
16 succeeding the date upon which it shall have become a law.