

# 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 twen-  
15 ty 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.

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

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

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

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

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

34 § 125.30 Homicide due to criminal sale of a controlled substance in the  
35 first degree.

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

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

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

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

53 4. It shall be an affirmative defense to a violation of this section  
54 or a violation of article two hundred twenty of this chapter where a  
55 person (hereinafter "seller") violates subdivision one of this section  
56 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.