

# STATE OF NEW YORK

8227--A

2021-2022 Regular Sessions

## IN ASSEMBLY

August 25, 2021

Introduced by M. of A. GRIFFIN, J. A. GIGLIO -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The penal law is amended by adding two new sections 125.28 and 125.29 to read as follows:

§ 125.28 Homicide due to criminal sale of a controlled substance in the second degree.

A person is guilty of homicide due to criminal sale of a controlled substance in the second degree when such person:

1. (a) Commits the offense of: (i) criminal sale of a controlled substance in the fifth degree as defined in section 220.31 of this chapter; (ii) criminal sale of a controlled substance in the fourth degree as defined in section 220.34 of this chapter; (iii) criminal sale of a controlled substance in the third degree as defined in section 220.39 of this chapter; (iv) criminal sale of a controlled substance in the second degree as defined in section 220.41 of this chapter; (v) criminal sale of a controlled substance in the first degree as defined in section 220.43 of this chapter; (vi) criminal sale of a controlled substance in or near school grounds as defined in section 220.44 of this chapter; (vii) criminal sale of a controlled substance to a child in the second degree as defined in section 220.48 of this chapter; (viii) criminal

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

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1 sale of a prescription for a controlled substance, a blank prescription  
2 form or of a controlled substance by a practitioner or pharmacist as  
3 defined in section 220.65 of this chapter; or (ix) operating as a major  
4 trafficker as defined in section 220.77 of this chapter; and

5 (b) The injection, inhalation, absorption, or ingestion of the  
6 controlled substance sold causes, or contributes to, the death of the  
7 person to whom the controlled substance was sold.

8 2. For purposes of this section, a person's act of manufacturing,  
9 distributing, or dispensing a controlled substance is the cause of a  
10 death when: the injection, inhalation, absorption, or ingestion of the  
11 controlled substance is an antecedent but for which the death would not  
12 have occurred.

13 3. It shall not be a defense to a prosecution under this section that  
14 the decedent contributed to their own death by such decedent's purpose-  
15 ful, knowing, reckless, or negligent injection, inhalation, absorption,  
16 or ingestion of the substance or by such decedent's consenting to the  
17 administration of the controlled substance by another. Nothing in this  
18 section shall be construed to preclude or limit any other prosecution  
19 under this article or article two hundred twenty of this chapter.

20 4. An indeterminate sentence of imprisonment is mandatory.

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

23 § 125.29 Homicide due to criminal sale of a controlled substance in the  
24 first degree.

25 A person is guilty of homicide due to criminal sale of a controlled  
26 substance in the first degree when such person:

27 1. (a) Commits the offense of: (i) criminal sale of a controlled  
28 substance in the fifth degree as defined in section 220.31 of this chap-  
29 ter; (ii) criminal sale of a controlled substance in the fourth degree  
30 as defined in section 220.34 of this chapter; (iii) criminal sale of a  
31 controlled substance in the third degree as defined in section 220.39 of  
32 this chapter; (iv) criminal sale of a controlled substance in the second  
33 degree as defined in section 220.41 of this chapter; (v) criminal sale  
34 of a controlled substance in the first degree as defined in section  
35 220.43 of this chapter; (vi) criminal sale of a controlled substance in  
36 or near school grounds as defined in section 220.44 of this chapter;  
37 (vii) criminal sale of a controlled substance to a child in the second  
38 degree as defined in section 220.48 of this chapter; (viii) criminal  
39 sale of a controlled substance to a child in the first degree as defined  
40 in section 220.49 of this chapter; (ix) criminal sale of a prescription  
41 for a controlled substance, a blank prescription form or of a controlled  
42 substance by a practitioner or pharmacist as defined in section 220.65  
43 of this chapter; or (x) operating as a major trafficker as defined in  
44 section 220.77 of this chapter;

45 (b) The injection, inhalation, absorption, or ingestion of the  
46 controlled substance sold causes, or contributes to, the death of the  
47 person to whom the controlled substance was sold; and

48 (c)(i) The controlled substance is listed in subdivision (c) or (d) of  
49 schedule II of section thirty-three hundred six of the public health  
50 law, other than methadone; (ii) an additional substance was added to the  
51 controlled substance sold which enhances the effects of the controlled  
52 substance and/or increases the danger of ingestion; (iii) the person to  
53 whom the controlled substance was sold was impaired by one or more  
54 substances at the time of the sale; (iv) the person knew, or had reason  
55 to know, that the person to whom the controlled substance was sold was  
56 using, or intended to use, one or more other substances in conjunction

1 with the controlled substance sold; (v) the person knew, or had reason  
2 to know, that the person to whom the controlled substance was sold had  
3 completed a rehabilitation program, or overdosed, within thirty days of  
4 the sale; or (vi) the person, being over twenty-one years old, sold a  
5 controlled substance to a person less than eighteen years old.

6 2. For purposes of this section, a person's act of manufacturing,  
7 distributing, or dispensing a controlled substance is the cause of a  
8 death when: the injection, inhalation, absorption, or ingestion of the  
9 controlled substance is an antecedent but for which the death would not  
10 have occurred.

11 3. It shall not be a defense to a prosecution under this section that  
12 the decedent contributed to their own death by such decedent's purpose-  
13 ful, knowing, reckless, or negligent injection, inhalation, absorption,  
14 or ingestion of the substance or by such decedent's consenting to the  
15 administration of the substance by another. Nothing in this section  
16 shall be construed to preclude or limit any other prosecution under this  
17 article or article two hundred twenty of this chapter.

18 4. An indeterminate sentence of imprisonment is mandatory.

19 Homicide due to criminal sale of a controlled substance in the first  
20 degree is a class A felony.

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

24 13. phencyclidine and said phencyclidine weighs one thousand two  
25 hundred fifty milligrams or more[+]; or

26 14. one or more preparations, compounds, mixtures or substances  
27 containing heroin and said preparations, compounds, mixtures or  
28 substances are of an aggregate weight of one and one-half grams or more,  
29 or such preparations, compounds, mixtures or substances are packaged in  
30 fifty or more containers, packets or "decks".

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

34 7. methadone and said methadone weighs two thousand eight hundred  
35 eighty milligrams or more[+]; or

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

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

44 2. methadone and said methadone weighs five thousand seven hundred  
45 sixty milligrams or more[+]; or

46 3. one or more preparations, compounds, mixtures or substances  
47 containing heroin and said preparations, compounds, mixtures or  
48 substances are of an aggregate weight of twenty-four grams or more, or  
49 such preparations, compounds, mixtures or substances are packaged in  
50 eight hundred or more containers, packets or "decks".

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

54 7. methadone and the methadone weighs three hundred sixty milligrams  
55 or more[+]; or

8. one or more preparations, compounds, mixtures or substances containing heroin and the preparations, compounds, mixtures or substances are of an aggregate weight of one and one-half grams or more, or such preparations, compounds, mixtures or substances are packaged in fifty or more containers, packets or "decks".

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

2. methadone and the methadone weighs two thousand eight hundred eighty milligrams or more[~~+~~]; or

3. one or more preparations, compounds, mixtures or substances containing heroin and the preparations, compounds, mixtures or substances are of an aggregate weight of six grams or more, or such preparations, compounds, mixtures or substances are packaged in two hundred or more containers, packets or "decks".

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

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

A person is guilty of criminal sale of a controlled substance to a child in the second degree when, being over twenty-one years old, he or she knowingly and unlawfully sells without consideration or other benefit or gain a controlled substance in violation of section 220.34 or 220.39 of this article to a person less than [~~seventeen~~] eighteen years old.

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

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

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

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

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

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

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

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

§ 220.55 Criminally using drug paraphernalia in the first degree.

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

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

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

15. "Prescription for a controlled substance" means a direction or authorization, by means of an official New York state prescription form,

1 an electronic prescription, a written prescription form or an oral  
2 prescription, which will permit a person to lawfully obtain a controlled  
3 substance from any person authorized to dispense controlled substances.

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

6 § 220.65 Criminal sale of a prescription for a controlled substance, a  
7 blank prescription form or of a controlled substance by a  
8 practitioner or pharmacist.

9 A person is guilty of criminal sale of a prescription for a controlled  
10 substance, a blank prescription form or of a controlled substance by a  
11 practitioner or pharmacist when: 1. being a practitioner, as that term  
12 is defined in section thirty-three hundred two of the public health law,  
13 he or she knowingly and unlawfully sells a prescription for a controlled  
14 substance or a blank prescription form. For the purposes of this  
15 section, a person sells a prescription for a controlled substance or a  
16 blank prescription form unlawfully when he or she does so other than in  
17 good faith in the course of his or her professional practice; or

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

25 Criminal sale of a prescription for a controlled substance, a blank  
26 prescription form or of a controlled substance by a practitioner or  
27 pharmacist is a class [C] B felony.

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