

# STATE OF NEW YORK

4058

2023-2024 Regular Sessions

## IN SENATE

February 2, 2023

Introduced by Sens. MANNION, PALUMBO -- read twice and ordered printed,  
and when printed to be committed 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:

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 sale of a prescription for a controlled substance, a blank prescription

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

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

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

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

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

19 4. An indeterminate sentence of imprisonment is mandatory.

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

22 § 125.29 Homicide due to criminal sale of a controlled substance in the  
23 first degree.

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

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

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

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

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

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

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

17 4. An indeterminate sentence of imprisonment is mandatory.

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

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

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

25 14. 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 one and one-half grams or more,  
28 or such preparations, compounds, mixtures or substances are packaged in  
29 fifty or more containers, packets or "decks".

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

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

35 8. 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 twelve grams or more, or such  
38 preparations, compounds, mixtures or substances are packaged in four  
39 hundred or more containers, packets or "decks".

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

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

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

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

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

55 8. 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 one and one-half grams or more,  
2 or such preparations, compounds, mixtures or substances are packaged in  
3 fifty or more containers, packets or "decks".

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

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

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

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

16 § 220.48 Criminal sale of a controlled substance to a child in the  
17 second degree.

18 A person is guilty of criminal sale of a controlled substance to a  
19 child in the second degree when, being over twenty-one years old, he or  
20 she knowingly and unlawfully sells without consideration or other bene-  
21 fit or gain a controlled substance in violation of section 220.34 or  
22 220.39 of this article to a person less than [~~seventeen~~] eighteen years  
23 old.

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

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

28 § 220.49 Criminal sale of a controlled substance to a child in the first  
29 degree.

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

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

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

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

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

44 § 220.55 Criminally using drug paraphernalia in the first degree.

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

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

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

53 15. "Prescription for a controlled substance" means a direction or  
54 authorization, by means of an official New York state prescription form,  
55 an electronic prescription, a written prescription form or an oral

1 prescription, which will permit a person to lawfully obtain a controlled  
2 substance from any person authorized to dispense controlled substances.

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

5 § 220.65 Criminal sale of a prescription for a controlled substance, a  
6 blank prescription form or of a controlled substance by a  
7 practitioner or pharmacist.

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

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

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

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