

## **NYS Penal Law**

### **Article 220 - Controlled Substances Offenses**

#### **220.03 Criminal possession of a controlled substance in the seventh degree.**

A person is guilty of criminal possession of a controlled substance in the seventh degree when he or she knowingly and unlawfully possesses a controlled substance; provided, however, that it shall not be a violation of this section when a person possesses a residual amount of a controlled substance and that residual amount is in or on a hypodermic syringe or hypodermic needle obtained and possessed pursuant to section thirty-three hundred eighty-one of the public health law, which includes the state's syringe exchange and pharmacy and medical provider-based expanded syringe access programs; nor shall it be a violation of this section when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care as defined in paragraph (b) of subdivision three of section 220.78 of the penal law, for either another person or him or herself because such person is experiencing a drug or alcohol overdose or other life threatening medical emergency as defined in paragraph (a) of subdivision three of section 220.78 of the penal law.

Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

#### **S 220.06 Criminal possession of a controlled substance in the fifth degree.**

A person is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it; or

2. one or more preparations, compounds, mixtures or substances containing a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
3. phencyclidine and said phencyclidine weighs fifty milligrams or more; or
4. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one-fourth ounce or more; or
5. cocaine and said cocaine weighs five hundred milligrams or more.
6. ketamine and said ketamine weighs more than one thousand milligrams; or
7. ketamine and has previously been convicted of possession or the attempt to commit possession of ketamine in any amount; or
8. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more.

Criminal possession of a controlled substance in the fifth degree is a class D felony.

#### **S 220.09 Criminal possession of a controlled substance in the fourth degree.**

A person is guilty of criminal possession of a controlled substance in the fourth degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or
2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
3. one or more preparations, compounds, mixtures or substances containing a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or
4. a stimulant and said stimulant weighs one gram or more; or
5. lysergic acid diethylamide and said lysergic acid diethylamide weighs one milligram or more; or
6. a hallucinogen and said hallucinogen weighs twenty-five milligrams or more; or
7. a hallucinogenic substance and said hallucinogenic substance weighs one gram or more; or
8. a dangerous depressant and such dangerous depressant weighs ten ounces or more; or
9. a depressant and such depressant weighs two pounds or more; or
10. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one ounce or more; or
11. phencyclidine and said phencyclidine weighs two hundred fifty

milligrams or more; or

12. methadone and said methadone weighs three hundred sixty milligrams or more; or

13. phencyclidine and said phencyclidine weighs fifty milligrams or more with intent to sell it and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or

14. ketamine and said ketamine weighs four thousand milligrams or more; or

15. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of two hundred grams or more.

Criminal possession of a controlled substance in the fourth degree is a class C felony.

#### **S 220.16 Criminal possession of a controlled substance in the third degree.**

A person is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses:

1. a narcotic drug with intent to sell it; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide, with intent to sell it and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. a stimulant with intent to sell it and said stimulant weighs one gram or more; or

4. lysergic acid diethylamide with intent to sell it and said lysergic acid diethylamide weighs one milligram or more; or
5. a hallucinogen with intent to sell it and said hallucinogen weighs twenty-five milligrams or more; or
6. a hallucinogenic substance with intent to sell it and said hallucinogenic substance weighs one gram or more; or
7. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers with intent to sell it and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or
8. a stimulant and said stimulant weighs five grams or more; or
9. lysergic acid diethylamide and said lysergic acid diethylamide weighs five milligrams or more; or
10. a hallucinogen and said hallucinogen weighs one hundred twenty-five milligrams or more; or
11. a hallucinogenic substance and said hallucinogenic substance weighs five grams or more; or
12. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
13. phencyclidine and said phencyclidine weighs one thousand two hundred fifty milligrams or more.

Criminal possession of a controlled substance in the third degree is a class B felony.

#### **S 220.18 Criminal possession of a controlled substance in the second degree.**

A person is guilty of criminal possession of a controlled substance in

the second degree when he or she knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of four ounces or more; or
2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and said preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or
3. a stimulant and said stimulant weighs ten grams or more; or
4. lysergic acid diethylamide and said lysergic acid diethylamide weighs twenty-five milligrams or more; or
5. a hallucinogen and said hallucinogen weighs six hundred twenty-five milligrams or more; or
6. a hallucinogenic substance and said hallucinogenic substance weighs twenty-five grams or more; or
7. methadone and said methadone weighs two thousand eight hundred eighty milligrams or more.

Criminal possession of a controlled substance in the second degree is a class A-II felony.

#### S 220.21 **Criminal possession of a controlled substance in the first degree.**

A person is guilty of criminal possession of a controlled substance in the first degree when he or she knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of eight ounces or more; or
2. methadone and said methadone weighs five thousand seven hundred

sixty milligrams or more.

Criminal possession of a controlled substance in the first degree is a class A-I felony.

**S 220.25 Criminal possession of a controlled substance; presumption.**

1. The presence of a controlled substance in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such controlled substance was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (c) when the controlled substance is concealed upon the person of one of the occupants.

2. The presence of a narcotic drug, narcotic preparation, marihuana or phencyclidine in open view in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, package or otherwise prepare for sale such controlled substance is presumptive evidence of knowing possession thereof by each and every person in close proximity to such controlled substance at the time such controlled substance was found; except that such presumption does not apply to any such persons if (a) one of them, having obtained such controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (b) one of them has such controlled substance

upon his person.

**S 220.28 Use of a child to commit a controlled substance offense.**

1. A person is guilty of use of a child to commit a controlled substance offense when, being eighteen years old or more, he or she commits a felony sale or felony attempted sale of a controlled substance in violation of this article and, as part of that criminal transaction, knowingly uses a child to effectuate such felony sale or felony attempted sale of such controlled substance.

2. For purposes of this section, "uses a child to effectuate the felony sale or felony attempted sale of such controlled substance" means conduct by which the actor: (a) conceals such controlled substance on or about the body or person of such child for the purpose of effectuating the criminal sale or attempted sale of such controlled substance to a third person; or (b) directs, forces or otherwise requires such child to sell or attempt to sell or offer direct assistance to the defendant in selling or attempting to sell such controlled substance to a third person.

For purposes of this section, "child" means a person less than sixteen years of age.

Use of a child to commit a controlled substance offense is a class E felony.

**S 220.31 Criminal sale of a controlled substance in the fifth degree.**

A person is guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance.

Criminal sale of a controlled substance in the fifth degree is a class D felony.



**S 220.34 Criminal sale of a controlled substance in the fourth degree.**

A person is guilty of criminal sale of a controlled substance in the fourth degree when he knowingly and unlawfully sells:

1. a narcotic preparation; or
2. a dangerous depressant or a depressant and the dangerous depressant weighs ten ounces or more, or the depressant weighs two pounds or more; or
3. concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; or
4. phencyclidine and the phencyclidine weighs fifty milligrams or more; or
5. methadone; or
6. any amount of phencyclidine and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or
- 6-a. ketamine and said ketamine weighs four thousand milligrams or more.
7. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon school grounds or on a school bus; or
8. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds. As used in this subdivision, the phrase "the grounds of a child day care or educational facility" shall have the same meaning as provided for in

subdivision five of section 220.44 of this article. For the purposes of this subdivision, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility; or

9. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more.

Criminal sale of a controlled substance in the fourth degree is a class C felony.

#### **S 220.39 Criminal sale of a controlled substance in the third degree.**

A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

1. a narcotic drug; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. a stimulant and the stimulant weighs one gram or more; or
4. lysergic acid diethylamide and the lysergic acid diethylamide weighs one milligram or more; or
5. a hallucinogen and the hallucinogen weighs twenty-five milligrams or more; or
6. a hallucinogenic substance and the hallucinogenic substance weighs

one gram or more; or

7. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or

8. phencyclidine and the phencyclidine weighs two hundred fifty milligrams or more; or

9. a narcotic preparation to a person less than twenty-one years old.

Criminal sale of a controlled substance in the third degree is a class B felony.

#### S 220.41 **Criminal sale of a controlled substance in the second degree.**

A person is guilty of criminal sale of a controlled substance in the second degree when he knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and the preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or

2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or

3. a stimulant and the stimulant weighs five grams or more; or

4. lysergic acid diethylamide and the lysergic acid diethylamide weighs five milligrams or more; or

5. a hallucinogen and the hallucinogen weighs one hundred twenty-five milligrams or more; or

6. a hallucinogenic substance and the hallucinogenic substance weighs

five grams or more; or

7. methadone and the methadone weighs three hundred sixty milligrams or more.

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

#### S 220.43 **Criminal sale of a controlled substance in the first degree.**

A person is guilty of criminal sale of a controlled substance in the first degree when he knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and the preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or

2. methadone and the methadone weighs two thousand eight hundred eighty milligrams or more.

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

#### S 220.44 **Criminal sale of a controlled substance in or near school grounds.**

A person is guilty of criminal sale of a controlled substance in or near school grounds when he knowingly and unlawfully sells:

1. a controlled substance in violation of any one of subdivisions one through six-a of section [220.34](#) of this article, when such sale takes place upon school grounds or on a school bus; or

2. a controlled substance in violation of any one of subdivisions one through eight of section [220.39](#) of this article, when such sale takes place upon school grounds or on a school bus; or

3. a controlled substance in violation of any one of subdivisions one

through six of section [220.34](#) of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds; or

4. a controlled substance in violation of any one of subdivisions one through eight of section [220.39](#) of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds.

5. For purposes of subdivisions three and four of this section, "the grounds of a child day care or educational facility" means (a) in or on or within any building, structure, athletic playing field, a playground or land contained within the real property boundary line of a public or private child day care center as such term is defined in paragraph (c) of subdivision one of section three hundred ninety of the social services law, or nursery, pre-kindergarten or kindergarten, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such facility or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such facility. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

6. For the purposes of this section, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility.

Criminal sale of a controlled substance in or near school grounds is a class B felony.

**S 220.45 Criminally possessing a hypodermic instrument.**

A person is guilty of criminally possessing a hypodermic instrument when he or she knowingly and unlawfully possesses or sells a hypodermic syringe or hypodermic needle. It shall not be a violation of this section when a person obtains and possesses a hypodermic syringe or hypodermic needle pursuant to section thirty-three hundred eighty-one of the public health law, which includes the state's syringe exchange and pharmacy and medical provider-based expanded syringe access programs.

Criminally possessing a hypodermic instrument is a class A misdemeanor.

**S 220.46 Criminal injection of a narcotic drug.**

A person is guilty of criminal injection of a narcotic drug when he knowingly and unlawfully possesses a narcotic drug and he intentionally injects by means of a hypodermic syringe or hypodermic needle all or any portion of that drug into the body of another person with the latter's consent.

Criminal injection of a narcotic drug is a class E felony.

**S 220.48 Criminal sale of a controlled substance to a child.**

A person is guilty of criminal sale of a controlled substance to a child when, being over twenty-one years old, he or she knowingly and unlawfully sells a controlled substance in violation of section [220.34](#) or [220.39](#) of this article to a person less than seventeen years old.

Criminal sale of a controlled substance to a child is a class B felony.

**S 220.50 Criminally using drug paraphernalia in the second degree.**

A person is guilty of criminally using drug paraphernalia in the second degree when he knowingly possesses or sells:

1. Diluents, dilutants or adulterants, including but not limited to, any of the following: quinine hydrochloride, mannitol, mannite, lactose or dextrose, adapted for the dilution of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purposes of unlawfully mixing, compounding, or otherwise preparing any narcotic drug or stimulant; or
2. Gelatine capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant; or
3. Scales and balances used or designed for the purpose of weighing or measuring controlled substances, under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant.

Criminally using drug paraphernalia in the second degree is a class A misdemeanor.

**S 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 felony.

#### **S 220.60 Criminal possession of precursors of controlled substances.**

A person is guilty of criminal possession of precursors of controlled substances when, with intent to manufacture a controlled substance unlawfully, he possesses at the same time:

- (a) carbamide (urea) and propanedioc and malonic acid or its derivatives; or
- (b) ergot or an ergot derivative and diethylamine or dimethylformamide or diethylamide; or
- (c) phenylacetone (1-phenyl-2 propanone) and hydroxylamine or ammonia or formamide or benzaldehyde or nitroethane or methylamine.
- (d) pentazocine and methyliodide; or
- (e) phenylacetone nitrile and dichlorodiethyl methylamine or dichlorodiethyl benzylamine; or
- (f) diephenylacetone nitrile and dimethylaminoisopropyl chloride; or
- (g) piperidine and cyclohexanone and bromobenzene and lithium or magnesium; or
- (h) 2, 5-dimethoxy benzaldehyde and nitroethane and a reducing agent.

Criminal possession of precursors of controlled substances is a class E felony.

#### **S 220.65 Criminal sale of a prescription for a controlled substance or of a controlled substance by a practitioner or pharmacist.**



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

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

Criminal sale of a prescription for a controlled substance or of a controlled substance by a practitioner or pharmacist is a class C felony.

#### **S 220.70 Criminal possession of methamphetamine manufacturing material in the second degree.**

A person is guilty of criminal possession of methamphetamine manufacturing material in the second degree when he or she possesses a precursor, a chemical reagent or a solvent with the intent to use or knowing another intends to use such precursor, chemical reagent, or solvent to unlawfully produce, prepare or manufacture methamphetamine.

Criminal possession of methamphetamine manufacturing material in the second degree is a class A misdemeanor.

**S 220.71 Criminal possession of methamphetamine manufacturing material in the first degree.**

A person is guilty of criminal possession of methamphetamine manufacturing material in the first degree when he or she commits the offense of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section [220.70](#) of this article, and has previously been convicted within the preceding five years of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section [220.70](#) of this article, or a violation of this section.

Criminal possession of methamphetamine manufacturing material in the first degree is a class E felony.

**S 220.72 Criminal possession of precursors of methamphetamine.**

A person is guilty of criminal possession of precursors of methamphetamine when he or she possesses at the same time a precursor and a solvent or chemical reagent, with intent to use or knowing that another intends to use each such precursor, solvent or chemical reagent to unlawfully manufacture methamphetamine.

Criminal possession of precursors of methamphetamine is a class E felony.

**S 220.73 Unlawful manufacture of methamphetamine in the third degree.**

A person is guilty of unlawful manufacture of methamphetamine in the third degree when he or she possesses at the same time and location, with intent to use, or knowing that another intends to use each such

product to unlawfully manufacture, prepare or produce methamphetamine:

1. Two or more items of laboratory equipment and two or more precursors, chemical reagents or solvents in any combination; or
2. One item of laboratory equipment and three or more precursors, chemical reagents or solvents in any combination; or
3. A precursor:
  - (a) mixed together with a chemical reagent or solvent; or
  - (b) with two or more chemical reagents and/or solvents mixed together.

Unlawful manufacture of methamphetamine in the third degree is a class D felony.

#### **S 220.74 Unlawful manufacture of methamphetamine in the second degree.**

A person is guilty of unlawful manufacture of methamphetamine in the second degree when he or she:

1. Commits the offense of unlawful manufacture of methamphetamine in the third degree as defined in section [220.73](#) of this article in the presence of another person under the age of sixteen, provided, however, that the actor is at least five years older than such other person under the age of sixteen; or
2. Commits the crime of unlawful manufacture of methamphetamine in the third degree as defined in section [220.73](#) of this article and has previously been convicted within the preceding five years of the offense of criminal possession of precursors of methamphetamine as defined in section [220.72](#) of this article, criminal possession of methamphetamine manufacturing material in the first degree as defined in section 220.71 of this article, unlawful disposal of methamphetamine laboratory material as defined in section [220.76](#) of this article, unlawful

manufacture of methamphetamine in the third degree as defined in section [220.73](#) of this article, unlawful manufacture of methamphetamine in the second degree as defined in this section, or unlawful manufacture of methamphetamine in the first degree as defined in section 220.75 of this article.

Unlawful manufacture of methamphetamine in the second degree is a class C felony.

#### **S 220.75 Unlawful manufacture of methamphetamine in the first degree.**

A person is guilty of unlawful manufacture of methamphetamine in the first degree when such person commits the crime of unlawful manufacture of methamphetamine in the second degree, as defined in subdivision one of section [220.74](#) of this article, after having previously been convicted within the preceding five years of unlawful manufacture of methamphetamine in the third degree, as defined in section [220.73](#), unlawful manufacture of methamphetamine in the second degree, as defined in section [220.74](#) of this article, or unlawful manufacture of methamphetamine in the first degree, as defined in this section.

Unlawful manufacturer of methamphetamine in the first degree is a class B felony.

#### **S 220.76 Unlawful disposal of methamphetamine laboratory material.**

A person is guilty of unlawful disposal of methamphetamine laboratory material when, knowing that such actions are in furtherance of a methamphetamine operation, he or she knowingly disposes of, or possesses with intent to dispose of, hazardous or dangerous material under circumstances that create a substantial risk to human health or safety

or a substantial danger to the environment.

Unlawful disposal of methamphetamine laboratory material is a class E felony.

#### S 220.77 **Operating as a major trafficker.**

A person is guilty of operating as a major trafficker when:

1. Such person acts as a director of a controlled substance organization during any period of twelve months or less, during which period such controlled substance organization sells one or more controlled substances, and the proceeds collected or due from such sale or sales have a total aggregate value of seventy-five thousand dollars or more; or
2. As a profiteer, such person knowingly and unlawfully sells, on one or more occasions within six months or less, a narcotic drug, and the proceeds collected or due from such sale or sales have a total aggregate value of seventy-five thousand dollars or more.
3. As a profiteer, such person knowingly and unlawfully possesses, on one or more occasions within six months or less, a narcotic drug with intent to sell the same, and such narcotic drugs have a total aggregate value of seventy-five thousand dollars or more.

Operating as a major trafficker is a class A-1 felony.

#### S 220.78 **Witness or victim of drug or alcohol overdose.**

1. A person who, in good faith, seeks health care for someone who is experiencing a drug or alcohol overdose or other life threatening medical emergency shall not be charged or prosecuted for a controlled substance offense under article two hundred twenty or a marijuana

offense under article two hundred twenty-one of this title, other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years under section sixty-five-c of the alcoholic beverage control law, or for possession of drug paraphernalia under article thirty-nine of the general business law, with respect to any controlled substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care.

2. A person who is experiencing a drug or alcohol overdose or other life threatening medical emergency and, in good faith, seeks health care for himself or herself or is the subject of such a good faith request for health care, shall not be charged or prosecuted for a controlled substance offense under this article or a marihuana offense under article two hundred twenty-one of this title, other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years under section sixty-five-c of the alcoholic beverage control law, or for possession of drug paraphernalia under article thirty-nine of the general business law, with respect to any substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care.

3. Definitions. As used in this section the following terms shall have the following meanings:

(a) "Drug or alcohol overdose" or "overdose" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria or death, which is the result of consumption or use of a controlled substance or alcohol and relates to an adverse reaction to or the

quantity of the controlled substance or alcohol or a substance with which the controlled substance or alcohol was combined; provided that a patient's condition shall be deemed to be a drug or alcohol overdose if a prudent layperson, possessing an average knowledge of medicine and health, could reasonably believe that the condition is in fact a drug or alcohol overdose and (except as to death) requires health care.

(b) "Health care" means the professional services provided to a person experiencing a drug or alcohol overdose by a health care professional licensed, registered or certified under title eight of the education law or article thirty of the public health law who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services for a person experiencing a drug or alcohol overdose.

4. It shall be an affirmative defense to a criminal sale controlled substance offense under this article or a criminal sale of marijuana offense under article two hundred twenty-one of this title, not covered by subdivision one or two of this section, with respect to any controlled substance or marijuana which was obtained as a result of such seeking or receiving of health care, that:

(a) the defendant, in good faith, seeks health care for someone or for him or herself who is experiencing a drug or alcohol overdose or other life threatening medical emergency; and

(b) the defendant has no prior conviction for the commission or attempted commission of a class [A-I](#), [A-II](#) or [B felony](#) under this article.

5. Nothing in this section shall be construed to bar the admissibility of any evidence in connection with the investigation and prosecution of a crime with regard to another defendant who does not independently

qualify for the bar to prosecution or for the affirmative defense; nor with regard to other crimes committed by a person who otherwise qualifies under this section; nor shall anything in this section be construed to bar any seizure pursuant to law, including but not limited to pursuant to section thirty-three hundred eighty-seven of the public health law.

6. The bar to prosecution described in subdivisions one and two of this section shall not apply to the prosecution of a class A-I felony under this article, and the affirmative defense described in subdivision four of this section shall not apply to the prosecution of a [class A-I](#) or [A-II felony](#) under this article.



## **Article 178 - Criminal Diversion of Prescription Medications and Prescriptions**

### **S 178.05 Criminal diversion of prescription medications and prescriptions; limitation.**

1. The provisions of this article shall not apply to:

(a) a duly licensed physician or other person authorized to issue a prescription acting in good faith in the lawful course of his or her profession; or

(b) a duly licensed pharmacist acting in good faith in the lawful course of the practice of pharmacy; or

(c) a person acting in good faith seeking treatment for a medical condition or assisting another person to obtain treatment for a medical condition.

2. No provision of this article relating to the sale of a prescription medication or device shall be deemed to authorize any act prohibited by article thirty-three of the public health law or article two hundred twenty of this chapter.

### **S 178.10 Criminal diversion of prescription medications and prescriptions in the fourth degree.**

A person is guilty of criminal diversion of prescription medications and prescriptions in the fourth degree when he or she commits a criminal diversion act.

Criminal diversion of prescription medications and prescriptions in the fourth degree is a class A misdemeanor.

**S 178.15 Criminal diversion of prescription medications and prescriptions in the third degree.**

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

1. commits a criminal diversion act, and the value of the benefit exchanged is in excess of one thousand dollars; or
2. commits the crime of criminal diversion of prescription medications and prescriptions in the fourth degree, and has previously been convicted of the crime of criminal diversion of prescription medications and prescriptions in the fourth degree.

Criminal diversion of prescription medications and prescriptions in the third degree is a class E felony.

**S 178.20 Criminal diversion of prescription medications and prescriptions in the second degree.**

A person is guilty of criminal diversion of prescription medications and prescriptions in the second degree when he or she commits a criminal diversion act, and the value of the benefit exchanged is in excess of three thousand dollars.

Criminal diversion of prescription medications and prescriptions in the second degree is a class D felony.

**S 178.25 Criminal diversion of prescription medications and prescriptions in the first degree.**

A person is guilty of criminal diversion of prescription medications and prescriptions in the first degree when he or she commits a criminal

diversion act, and the value of the benefit exchanged is in excess of fifty thousand dollars.

Criminal diversion of prescription medications and prescriptions in the first degree is a class C felony.

#### S 178.26 **Fraud and deceit related to controlled substances.**

1. No person shall willfully:

(a) obtain or attempt to obtain a controlled substance, a prescription for a controlled substance or an official New York state prescription form,

(i) by fraud, deceit, misrepresentation or subterfuge; or

(ii) by the concealment of a material fact; or

(iii) by the use of a false name or the giving of a false address;

(b) make a false statement in any prescription, order, application, report or record required by article thirty-three of the public health law;

(c) falsely assume the title of, or represent himself or herself to be a licensed manufacturer, distributor, pharmacy, pharmacist, practitioner, researcher, approved institutional dispenser, owner or employee of a registered outsourcing facility or other authorized person, for the purpose of obtaining a controlled substance as these terms are defined in article thirty-three of the public health law;

(d) make or utter any false or forged prescription or false or forged written order;

(e) affix any false or forged label to a package or receptacle containing controlled substances; or

(f) imprint on or affix to any controlled substance a false or forged

code number or symbol.

2. Possession of a false or forged prescription for a controlled substance by any person other than a pharmacist in the lawful pursuance of his or her profession shall be presumptive evidence of his or her intent to use the same for the purpose of illegally obtaining a controlled substance.

3. Possession of a blank official New York state prescription form by any person to whom it was not lawfully issued shall be presumptive evidence of such person's intent to use same for the purpose of illegally obtaining a controlled substance.

4. Any person who, in the course of treatment, is supplied with a controlled substance or a prescription therefor by one practitioner and who with the intent to deceive, intentionally withholds or intentionally fails to disclose the fact, is supplied during such treatment with a controlled substance or a prescription therefor by another practitioner shall be guilty of a violation of this article.

5. The provisions of subdivision one of section thirty-three hundred ninety-six of the public health law shall apply to this section.

Fraud and deceit related to controlled substances is a class A misdemeanor.

## **Article 222 - Cannabis**

### **222.25 Unlawful possession of cannabis**

It is unlawful to knowingly and unlawfully possess more than three ounces of cannabis or more than 24 grams of concentrated cannabis. Possessing lesser amounts is lawful under the new law. Violation of section 222.25 is a violation punishable by a fine of up to \$125. A violation is not a crime; there is no potential for jail time, and no criminal record is created.

### **222.30 Criminal possession of cannabis in the third degree**

It is illegal to knowingly and unlawfully possess more than 16 ounces of cannabis or more than five ounces of concentrated cannabis. Violation of 222.30 is a Class A misdemeanor, punishable by up to a year in jail and up to \$1,000 in fines.

### **222.35 Criminal possession of cannabis in the second degree**

It is illegal to knowingly and unlawfully possess more than five pounds of cannabis or more than two pounds of concentrated cannabis. Violation of 222.35 is a Class E felony, punishable by one and a half to four years in prison and up to \$5,000 in fines.

### **222.40 Criminal possession of cannabis in the first degree**

It is illegal to knowingly and unlawfully possess more than ten pounds of cannabis or more than four pounds of concentrated cannabis. Violation of 222.40 is a Class D felony, punishable with between one to three and seven years in prison and up to \$5,000 in fines.

## **Marijuana Sale Offenses**

Crimes involving the unlawful sale of cannabis follow along the same lines as the possession offenses described above, although the penalties are steeper.

### **222.45 Unlawful sale of cannabis**

One who knowingly and unlawfully sells cannabis or concentrated cannabis can be found guilty of a violation punishable by up to a \$250 fine.

### **222.50 Criminal sale of cannabis in the third degree**

One who knowingly and unlawfully sells more than three ounces of cannabis or more than 24 grams of concentrated cannabis can be found guilty of a Class A misdemeanor. Also, someone who, being 21 or older, sells or gives cannabis to a person under 21 violates this provision of the law, provided the defendant is 21 or older and three or more years older than the person who bought or received the cannabis.

### **222.55 Criminal sale of cannabis in the second degree**

One who knowingly and unlawfully sells more than 16 ounces of cannabis or more than five ounces of concentrated cannabis, or who gives or sells cannabis to a person under 21 while being 21 or older and three or more years older than the person who bought or received the cannabis, can be found guilty of a Class E felony.

### **222.60 Criminal sale of cannabis in the first degree**

One who knowingly and unlawfully sells more than five pounds of cannabis or more than two pounds of concentrated cannabis can be found guilty of a Class D felony.

### **222.65 Aggravated criminal sale of cannabis in the first degree**

One who knowingly and unlawfully sells 100 pounds or more of cannabis or concentrated cannabis can be found guilty of a Class C felony, punishable by three and a half to 15 years in prison.