



MADLINE SINGAS
ACTING DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
NASSAU COUNTY

September 4, 2015

Hon. John Flanagan
Majority Leader, New York State Senate
The State Capitol, Room 330
Albany, NY 12247

Hon. Carl Heastie
Speaker, New York State Assembly
LOB Room 932
Albany, NY 12248

Hon. Andrea Stewart-Cousins
Democratic Conference Leader
New York State Senate
LOB Room 907
Albany, NY 12248

Hon. Brian Kolb
Minority Leader, New York State Assembly
LOB Room 933
Albany, NY 12247

Hon. Jeffrey Klein
Independent Democratic Conference Leader
New York State Senate
LOB Room 913
Albany, NY 12247

Dear Legislative Leaders:

An epidemic of heroin abuse is exploding across the country and here in New York. New York's I-STOP legislation has been very successful limiting illegal access to addictive opioid prescription painkillers. Unfortunately those in the grip of addiction turn to heroin faster, which is frequently mixed with lethal additives like Fentanyl. This year alone, heroin deaths in Nassau County are up 100% from the same time last year. This is a crisis that requires immediate legislative action.

Please find enclosed a package of five bills, drafted by my staff, to give law enforcement the legal tools we need to crack down on the drug dealers who are killing members of our communities every day. I encourage the Legislature to take action on these important measures in a special session this fall.

The Nassau County District Attorney's office is already taking an aggressive, multifaceted approach to combat this epidemic—we have educated thousands of kids and parents through school programs, we have cracked down on dirty doctors and pharmacists who nurture addiction to prescription painkillers, we work to help substance abusers get the help they need, and we co-chair a 300-member County Heroin Prevention Task Force that helps to coordinate efforts countywide. While I have supported reforms made to the draconian Rockefeller Drug Laws, current law too often lets *dealers* off too easily, and to stop the pipeline, it's critical that the Legislature take immediate action help us take dealers off the street and end this scourge.

To that end, please find attached legislation that my office has drafted to:¹

- **Hold heroin dealers accountable for the deaths they cause with felony homicide charges.**
Those dealing heroin know that their product can kill, but current law provides insufficient charges to hold a dealer accountable for the deaths they cause. We propose a felony homicide charge in cases where an overdose death occurs within 24 hours of a sale, with elevated charges for dealers who sell drugs to a child who dies or for deaths resulting from drugs laced with a more dangerous additive.²
- **Lower the weight of heroin required to constitute an A-I or A-II felony to prevent dealers from escaping culpability through drug diversion.**³
Drug dealers should not benefit from more lenient programs intended to help addicts get treatment, but New York law frequently lets this happen. Currently, a dealer who sells a gram of cocaine faces the same penalty as a dealer who sells a gram of heroin—but common packaging and dosing differences are wildly different, and heroin is far more lethal. To face a non-divertable felony charge, a heroin dealer must possess approximately *13 times* as many doses as a cocaine dealer—about 500 doses. This makes it hard to seek the tough sentences that the worst-of-the-worst dealers deserve. To remedy this, we propose changes to N.Y. Pen. L. § 220 to lower the A-I and A-II felony weights of heroin possession and sale to give prosecutors the tools to put heroin dealers out of business.⁴
- **Enhance penalties for selling a controlled substance to children.**
Selling drugs to a child is especially despicable, and must carry a heavy penalty to deter dealers from preying on the most vulnerable. Therefore, we propose amending the existing Criminal Sale of a Controlled Substance to a Child to add an A-II felony, when a person over 21 sells a controlled substance, for profit or gain, to a person under 17.⁵
- **Elevate the penalties for criminal use of drug paraphernalia to provide an additional tool to stop dealers.**
Known drug dealers can escape serious penalties by limiting the supply of narcotics they keep on-hand, and under current law, the possession of the tools and paraphernalia of drug trade are punishable as only misdemeanor offenses. We propose elevating N.Y. Pen. L. § 220.50, Criminally Using Drug Paraphernalia in the Second Degree, from an A misdemeanor to an E felony, and for those with a prior conviction, a first degree charge as a D felony.

¹ Note that the descriptions of the legislative proposals in this letter are mere summaries, and the full text of the legislation, attached, contains important additional provisions, defenses, rebuttable presumptions, and details regarding the applicability of certain other statutes, including the “Good Samaritan Law.”

² See the enclosed detailed explanation as to the need for this legislation, “Rationale for Homicide Charges for Dealers,” enclosed herewith as *Exhibit 1*.

³ See the enclosed photo, *Exhibit 2* which illustrates the current disparity

⁴ The Office of the Special Narcotics Prosecutor, Bridget Brennan, is exploring a proposal that would achieve the same result based on the number of heroin packets sold. The Nassau County District Attorney’s office supports this approach with equal enthusiasm. The enclosed legislation is consistent with the current weight-based statutory construction.

⁵ This proposal would make N.Y. Pen. L. §220.34 or 220.39 a second degree charge, with the A-II felony proposal the first degree offense.

In addition, because so many deadly opiate addictions begin with the abuse of prescription pain medication, it is critical that we enhance the penalties for doctors and pharmacists who sell prescriptions for profit. While I-STOP has already significantly curtailed doctor shopping, and enhanced oversight, any unscrupulous medical professional who sells a prescription to an addict is a drug dealer in a lab coat, and should face equally harsh penalties.

Therefore, we propose legislation to:

- **Elevate penalties for medical professionals who feed addictions by unlawfully selling prescriptions and prescription drugs.**

Under current law, a user who shares drugs with another is potentially exposed to a higher charge than a doctor or pharmacist who sells prescriptions for addictive painkillers in bad faith.⁶ To deter this conduct, we propose elevating the criminal sale of a prescription for a controlled substance by a practitioner or pharmacist, and the sale of a controlled substance by a practitioner or pharmacist, to a B felony to make it the equivalent of selling the controlled substances that the prescription represents. To ensure its comprehensiveness, the statute should be revised to explicitly include “electronic prescriptions” in the definition. Finally, a conviction should result in an automatic and permanent revocation of a medical or pharmacy license.⁷

These legislative changes will give prosecutors better tools to take on street-level dealers, to identify their suppliers, and to collaborate with our law enforcement partners to cut the pipeline of heroin into our state and our neighborhoods.

As a prosecutor, I have spoken to too many heartbroken parents who have lost their children to overdoses, and seen too many promising lives cut short by this epidemic. By putting dealers on notice that a sale that leads to death means a long prison sentence; that selling heroin to a child means a long time upstate; that they won’t be able to game their way into diversion when they should be in jail; and that dirty doctors and pharmacists who sell prescriptions and drugs for profit will be punished like the drug dealers they are, we can make headway in this difficult fight.

Please review these proposals carefully, and take action on them as soon as possible. My office stands ready to assist you in any way we can.

Sincerely,



Madeline Singas
Acting Nassau County District Attorney

Cc: Hon. Andrew M. Cuomo, Governor

⁶ N.Y. Pen. L. § 178 provides an inconsistent means to charge medical practitioners for the unlawful sale of a prescription. This statute, passed in 1995 to combat Medicaid fraud, links the severity of charge to the monetary value of the prescription sold. It is of limited utility in the fight against doctors and pharmacists who unlawfully sell prescriptions for opioid painkillers to addicts. Both the New York State District Attorney’s Association and the NYC Office of the Special Narcotics Prosecutor are working to address this issue.

⁷ This provision requires a change to the Education Law, which is beyond the scope of the specific legislation proposed here.

Narcotics Legislative Proposals

ADD: **(Homicides)**

PL §125.11-a Homicide due to criminal sale of a controlled substance in the third degree

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

a) Commits the offense of criminal sale of a controlled substance in the fifth degree as defined in § 220.31 or criminal sale of a controlled substance in the fourth degree as defined in § 220.34 or criminal sale of a controlled substance in the third degree as defined in § 220.39 or criminal sale of a controlled substance in the second degree as defined in § 220.41 or criminal sale of a controlled substance in the first degree as defined in § 220.43 of this chapter and the controlled substance sold causes, or contributes, to the death of the person to whom the controlled substance was sold.

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

c) Criminal Procedure Law §216, Judicial Diversion Program for Certain Felony Offenders shall not apply to a violation of this section. Nothing contained herein shall prevent the court from sentencing a person convicted under this section to any other sentence authorized by law under articles 65 and 70 of this chapter.

d) Exemption. Where a person (hereinafter seller) violates paragraph a) of this section but the seller, in good faith, sought health care for the other person whose death resulted from the ingestion of the controlled substance sold, while that other person was experiencing the drug or alcohol overdose or other life threatening

medical emergency that led to that person's death, the seller shall not be charged or prosecuted under this section when the sale was not for consideration or other benefit or gain.

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

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

PL § 125.16 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 he or she,

a) Commits the offense of criminal sale of a controlled substance in the fifth degree as defined in § 220.31 or criminal sale of a controlled substance in the fourth degree as defined in § 220.34 or criminal sale of a controlled substance in the third degree as defined in § 220.39 or criminal sale of a controlled substance in the second degree as defined in § 220.41 or criminal sale of a controlled substance in the first degree as defined in § 220.43 of this chapter and the controlled substance sold causes, or contributes, to the death of the person to whom the controlled substance was sold; and

b) an additional substance was added to the controlled substance sold which enhances the effects of the controlled substance and/or increases the danger of ingestion; or

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

d) the person knew, or had reason to know, that the person to whom the controlled substance was sold was using, or intended to use, one or more other substances at or after the sale.

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

f) Criminal Procedure Law §216, Judicial Diversion Program for Certain Felony Offenders shall not apply to a violation of this section. Nothing contained herein shall prevent the court from sentencing a person convicted under this section to any other sentence authorized by law under articles 65 and 70 of this chapter.

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

h) Affirmative defense. It shall be an affirmative defense where a person (hereinafter seller) violates paragraph a) of this section and the sale was for consideration or other benefit or gain, but the seller, in good faith, sought health care for the other person whose death resulted from the ingestion of the controlled substance sold, while that other person was experiencing a drug or alcohol overdose or other life threatening medical emergency that led to that person's death, and the defendant has no prior conviction for the commission or attempted

commission of a class A-I, A-II or B felony under this article.

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

PL § 125.23 Homicide due to criminal sale of a controlled substance in the first degree

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

a) Commits the offense of Criminal sale of a controlled substance to a child in the first degree as defined in §220.49 and the controlled substance sold causes, or contributes, to the death of the person to whom the controlled substance was sold.

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

c) Criminal Procedure Law §216, Judicial Diversion Program for Certain Felony Offenders shall not apply to a violation of this section. Nothing contained herein shall prevent the court from sentencing a person convicted under this section to any other sentence authorized by law under articles 65 and 70 of this chapter.

d) Exemption. Where a person (hereinafter seller) violates paragraph a) of this section but the seller, in good faith, sought health care for the other person whose death resulted from the ingestion of the controlled substance sold, while that other person was experiencing the drug or alcohol overdose or other life threatening medical emergency that led to that person's death, the seller shall not be charged or

prosecuted under this section when the sale was not for consideration or other benefit or gain.

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

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

AMEND:
(Weight Statutes)

§ 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; **or**

14. one or more preparations, compounds, mixtures or substances containing heroin and said preparations, compounds, mixtures or substances are of an aggregate weight of 1.5 grams or more.

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

§ 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; **or**

8. one or more preparations, compounds, mixtures or substances containing heroin and said preparations, compounds, mixtures or substances are of an aggregate weight of 12 grams or more

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

§ 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; **or**
- 3. one or more preparations, compounds, mixtures or substances containing heroin and said preparations, compounds, mixtures or substances are of an aggregate weight of 24 grams or more.**

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

§ 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; **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 1.5 grams or more.

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

§ 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; **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 6 grams or more.

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

(AMEND)
(Relating to Children)

§ 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 years old.

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

(ADD)

§ 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 seventeen years old.

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

AMEND
(Paraphernalia)

§ 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 [\[A misdemeanor\]](#). **E felony.**

§ 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.**

(AMEND)
(Prescriptions)

§ 220.00 Controlled substances; definitions

1. “Sell” means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.
2. “Unlawfully” means in violation of article thirty-three of the public health law.
3. “Ounce” means an avoirdupois ounce as applied to solids or semisolids, and a fluid ounce as applied to liquids.
4. “Pound” means an avoirdupois pound.
5. “Controlled substance” means any substance listed in schedule I, II, III, IV or V of [section thirty-three hundred six of the public health law](#) other than marihuana, but including concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of such law.
6. “Marihuana” means “marihuana” or “concentrated cannabis” as those terms are defined in [section thirty-three hundred two of the public health law](#).
7. “Narcotic drug” means any controlled substance listed in schedule I(b), I(c), II(b) or II(c) other than methadone.
8. “Narcotic preparation” means any controlled substance listed in schedule II(b-1), III(d) or III(e).
9. “Hallucinogen” means any controlled substance listed in schedule I(d) (5), (18), (19), (20), (21) and (22).
10. “Hallucinogenic substance” means any controlled substance listed in schedule I(d) other than concentrated cannabis, lysergic acid diethylamide, or an hallucinogen.
11. “Stimulant” means any controlled substance listed in schedule I(f), II(d).
12. “Dangerous depressant” means any controlled substance listed in schedule I(e)(2), (3), II(e), III(c)(3) or IV(c)(2), (31), (32), (40).

13. “Depressant” means any controlled substance listed in schedule IV(c) except (c)(2), (31), (32), (40).

14. “School grounds” means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an “area accessible to the public” shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

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

16. For the purposes of [sections 220.70](#), [220.71](#), [220.72](#), [220.73](#), [220.74](#), [220.75](#) and [220.76](#) of this article:

(a) “Precursor” means ephedrine, pseudoephedrine, or any salt, isomer or salt of an isomer of such substances.

(b) “Chemical reagent” means a chemical reagent that can be used in the manufacture, production or preparation of methamphetamine.

(c) “Solvent” means a solvent that can be used in the manufacture, production or preparation of methamphetamine.

(d) “Laboratory equipment” means any items, components or materials that can be used in the manufacture, preparation or production of methamphetamine.

(e) “Hazardous or dangerous material” means any substance, or combination of substances, that results from or is used in the manufacture, preparation or production of methamphetamine which, because of its quantity, concentration, or physical or chemical characteristics, poses a substantial risk to human health or safety, or a substantial danger to the environment.

17. “School bus” means every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

18. “Controlled substance organization” means four or more persons sharing a common purpose to engage in conduct that constitutes or advances the commission of a felony under this article.

19. “Director” means a person who is the principal administrator, organizer, or leader of a controlled substance organization or one of several principal administrators, organizers, or leaders of a controlled substance organization.

20. “Profiteer” means a person who: (a) is a director of a controlled substance organization; (b) is a member of a controlled substance organization and has managerial responsibility over one or more other members of that organization; or (c) arranges, devises or plans one or more transactions constituting a felony under this article so as to obtain profits or expected profits. A person is not a profiteer if he or she is acting only as an employee; or if he or she is acting as an accommodation to a friend or relative; or if he or she is acting only under the direction and control of others and exercises no substantial, independent role in arranging or directing the transactions in question.

§ 220.65 Criminal sale of a prescription for a controlled substance, a blank prescription form 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, **or a blank prescription form**. 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, **or a blank prescription form**.

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