

Summary of S4313 - Legislative Proposal

Homicides:

There are 3 new homicides proposed. They are: “Homicide Due to Criminal Sale of a Controlled Substance” in the first, second and third degrees. All 3 have Good Samaritan provisions which mirror the existing Good Samaritan statute in PL 220.78. The third degree of the homicide is a D felony and states that if a person sells to another person who dies within 24 hours as a result of using the type of drug sold, the seller criminally responsible. The second degree is a C felony and is the same as the third degree with one of the following aggravating factors: there is another substance added to the drug sold to enhance its effects, the buyer was already impaired at the time of the sale, the seller knew or had reason to know the buyer was using or intended to use one or more other substances, or knew or had reason to know the buyer had completed rehab within the last 30 days. The first degree is a B felony. It requires a child, 16 or under to die as the result of a for-profit sale by a dealer over 21 years old. Each section specifies that they do not qualify for Judicial diversion, that all types of sentencing under PL articles 65 and 70 are applicable (including probation, or DTAP through prison sentences). The statutory language does not state it, but DTAP sentences are also possible.

Weight Statutes:

We have added sections to the sale and possession statutes according to the Narcotics bureau’s calculations of equivalent weights. Our statement about these proposals should include the fact that Madeline has conferred with Bridget Brennan (SNP) and that there have been discussions about SNP proposing statutes that will use the number of packets as the basis for felony levels. Madeline’s statement should indicate that her proposal is intended to be consistent with the current legislative approach of specifying weights for substances but that she would support legislation that recognized both calculations: weight or packaging. Right now, a drug dealer would have to possess almost 500 decks (glassines or doses) in order to have the 14 grams of weight to be charged with an A-II sale or possession. Unless it is an A-II charge, the defendant is still eligible for diversion. By comparison, cocaine is usually sold in one gram bags. The dealer would only have to have 14 of those to be charged with the A-II felony.

Summary of Weight Changes:

Current:	Proposed:
B felony (diversion eligible) = ½ oz. or approx. 473 decks	1.5 grams or 50 decks
A-II felony (no diversion) = 4 oz. or approx. 3,780 decks	12 grams or 400 decks
A-I felony (no diversion) = 8 oz. or approx. 7,560 decks	24 grams or 800 decks
A-I Sale (no diversion) = 2 oz. or approx. 1,890 decks	6 grams or 200 decks

Relating to Children:

We have amended the existing B felony Criminal sale of a controlled substance to a child (criminalizing a not-for-profit sale under 220.34 or 220.39 by a person over 21 years old to a person under 17) by making it “in the second degree”. I have added an A-II felony “first degree” section that makes it a higher level felony when the aggravating factor is the sale is “for consideration or other benefit or gain”.

Paraphernalia:

It was inconsistent and unreasonable to punish the possession of drug trade paraphernalia at the misdemeanor level. So we have elevated 220.50 Criminally using drug paraphernalia in the second degree from an A misdemeanor to an E felony and the first degree (same offense with a prior conviction) to a D felony.

Sales of Prescriptions:

Regarding the sale of prescriptions by health care professionals under article 220: We added electronic prescriptions to the 220 definition section, added “blank prescription forms” to 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”. Finally, we elevated the level of felony from a C to a B because it is offensive that a user sharing his or her drugs is subject to a B felony “sale” and currently, a practitioner or pharmacist is subject to a lesser felony (C felony) for selling prescriptions “other than in good faith”.

There is an odd statutory scheme under article 178 that addresses sales of prescriptions for money that is intended to address Medicaid/insurance fraud. The felony levels are based on the value received for the prescriptions, not the public health impact. The DA has chosen to focus on the public health provision under PL 220.65 at this time and leave the discussion of the efficacy of having a separate section for fraud to another time.