



## NEW YORK DRUG POSSESSION AND SALE CRIMES

By: Christopher Reinhart, Chief Attorney

### ISSUE

Summarize the penalties for drug possession and sale crimes in New York.

### SUMMARY

This report focuses on penalties for drug possession and sale crimes in New York. We break down these crimes into separate tables for possession, sale, and other related crimes. For purposes of this report, we exclude certain crimes such as those for drug paraphernalia and drug prescribers.

Penalties for drug crimes in New York range from a fine of up to \$100 for possessing marijuana under certain circumstances to a maximum of life in prison for operating as a major trafficker. The law requires each sentence for one of these offenders to include a period of post-release supervision. For class B, C, D, and E felonies, except for selling controlled substances to a child, the law allows the court to impose an alternative sentence of up to one year in prison under certain circumstances. The court must consider the crime's nature and circumstances and the defendant's history and character to determine that the sentence that would otherwise apply would be unduly harsh (NY Penal § 70.70). These alternate sentences are noted in the table below.

New York also enhances penalties for those with prior convictions. We include these in a separate table at the end of the report. A number of other sentencing rules apply to these offenders which we do not discuss in detail. For example, someone sentenced for a class A-II felony can be sentenced to lifetime probation and those convicted of a class B felony, except for selling a controlled substance to a child, can be sentenced to parole supervision.

## DRUG POSSESSION CRIMES

Table 1 describes the different drug possession crimes and their penalties in New York. Penalties for these crimes range from a fine of up to \$100 for certain types of marijuana possession to up to 20 years in prison for 1<sup>st</sup> degree possession of a controlled substance.

**Table 1: Drug Possession Crimes in New York**

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
Possessing controlled substances (NY Penal §§ 220.03 to 220.25)	7 <sup>th</sup> degree	Possessing a controlled substance	Class A misdemeanor <ul style="list-style-type: none"> <li>• Up to 1 year in prison</li> <li>• Up to \$1,000</li> </ul>
	5 <sup>th</sup> degree (New York does not have a 6 <sup>th</sup> degree crime)	Possessing: <ul style="list-style-type: none"> <li>• a controlled substance with intent to sell</li> <li>• at least ½ oz preparations containing narcotics preparations</li> <li>• at least 50 mg phencyclidine (PCP)</li> <li>• at least ¼ oz concentrated cannabis preparation</li> <li>• at least 500 mg cocaine</li> <li>• at least 1,000 mg ketamine</li> <li>• ketamine with a prior conviction of ketamine possession</li> <li>• at least 28 g of gamma hydroxybutyric acid (GHB)</li> </ul>	Class D felony <ul style="list-style-type: none"> <li>• 1 to 2.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>
	4 <sup>th</sup> degree	Possessing at least: <ul style="list-style-type: none"> <li>• ⅛ oz preparations containing a narcotic drug</li> <li>• ½ oz preparations containing methamphetamine or its precursors</li> <li>• 2 oz preparations containing narcotics preparations</li> <li>• 1 g stimulants</li> <li>• 1 mg lysergic acid diethylamide (LSD)</li> <li>• 25 mg hallucinogen</li> <li>• 1 g hallucinogenic substance</li> <li>• 10 oz dangerous depressant</li> <li>• 2 lbs of depressants</li> <li>• 1 oz of concentrated cannabis preparation</li> <li>• 250 mg PCP</li> <li>• 360 mg methadone</li> <li>• 50 mg PCP with intent to sell and prior conviction of a drug offense</li> <li>• 4,000 mg ketamine</li> <li>• 200 g GHB</li> </ul>	Class C felony <ul style="list-style-type: none"> <li>• 1 to 5.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$15,000</li> </ul>

Table 1 (continued)

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
	3 <sup>rd</sup> degree	Possessing: <ul style="list-style-type: none"> <li>• a narcotic with intent to sell</li> <li>• a stimulant, hallucinogen, hallucinogenic substance, or LSD with intent to sell and a prior drug conviction</li> <li>• at least 1 g stimulant with intent to sell</li> <li>• at least 1 mg LSD with intent to sell</li> <li>• at least 25 mg hallucinogen with intent to sell</li> <li>• at least 1 g hallucinogenic substance with intent to sell</li> <li>• at least 1/8 oz preparations containing methamphetamine or its precursors with intent to sell</li> <li>• at least 5 g stimulants</li> <li>• at least 5 mg LSD</li> <li>• at least 125 mg hallucinogens</li> <li>• at least 5 g hallucinogenic substance</li> <li>• at least 1/2 oz preparations containing a narcotic drug</li> <li>• at least 1,250 mg PCP</li> </ul>	Class B felony <ul style="list-style-type: none"> <li>• 1 to 9 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$30,000</li> </ul>
	2 <sup>nd</sup> degree	Possessing at least: <ul style="list-style-type: none"> <li>• 4 oz preparations containing a narcotic drug</li> <li>• 2 oz preparations containing methamphetamine or its precursors</li> <li>• 10 g stimulants</li> <li>• 25 mg LSD</li> <li>• 625 mg of a hallucinogen</li> <li>• 25 g hallucinogenic substance</li> <li>• 2,880 mg methadone</li> </ul>	Class A-II felony <ul style="list-style-type: none"> <li>• 3 to 10 years in prison</li> <li>• Up to \$50,000</li> </ul>
	1 <sup>st</sup> degree	Possessing at least: <ul style="list-style-type: none"> <li>• 8 oz preparations containing a narcotic drug</li> <li>• 5,760 oz of methadone</li> </ul>	Class A-I felony <ul style="list-style-type: none"> <li>• 8 to 20 years in prison</li> <li>• Up to \$100,000</li> </ul>
Possessing precursors of controlled substances (NY Penal § 220.60)	-	Possessing certain precursors of controlled substances with intent to make a controlled substance	Class E felony <ul style="list-style-type: none"> <li>• 1 to 1.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>

Table 1 (continued)

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
Possessing methamphetamine manufacturing material (NY Penal §§ 220.70 to 220.71)	2 <sup>nd</sup> degree	Possessing a precursor, solvent, or chemical reagent with intent to use it or knowing another intends to use it to produce methamphetamine.	Class A misdemeanor <ul style="list-style-type: none"> <li>• Up to 1 year in prison</li> <li>• Up to \$1,000</li> </ul>
	1 <sup>st</sup> degree	Subsequent conviction of the 2nd degree crime within 5 years of a previous conviction of the crime.	Class E felony <ul style="list-style-type: none"> <li>• 1 to 1.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>
Possessing methamphetamine precursors (NY Penal § 220.72)	-	With intent to use or knowing that another intends to use it to manufacture methamphetamine, possessing a: <ul style="list-style-type: none"> <li>• precursor and</li> <li>• solvent or chemical reagent</li> </ul>	Class E felony <ul style="list-style-type: none"> <li>• 1 to 1.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>
Possessing marijuana (NY Penal § 221.05)	-	Presumably, this punishes conduct not covered by the criminal penalties described below	<ul style="list-style-type: none"> <li>• Up to \$100</li> <li>• If prior drug conviction in prior 3 years: up to \$200</li> <li>• If two prior drug convictions in prior 3 years: up to 15 days in prison, up to \$250 fine, or both</li> </ul>
Possessing marijuana (NY Penal §§ 221.10 to 221.30)	5 <sup>th</sup> degree	Possessing marijuana <ul style="list-style-type: none"> <li>• In a public place, and the marijuana is burning or open to public view or</li> <li>• preparations weighing more than 25g</li> </ul>	Class B misdemeanor <ul style="list-style-type: none"> <li>• Up to 3 months in prison</li> <li>• Up to \$500</li> </ul>
	4 <sup>th</sup> degree	Possessing more than 2 oz of marijuana preparations	Class A misdemeanor <ul style="list-style-type: none"> <li>• Up to 1 year in prison</li> <li>• Up to \$1,000</li> </ul>
	3 <sup>rd</sup> degree	Possessing more than 8 oz of marijuana preparations	Class E felony <ul style="list-style-type: none"> <li>• 1 to 1.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>

Table 1 (continued)

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
	2 <sup>nd</sup> degree	Possessing more than 16 oz of marijuana preparations	Class D felony <ul style="list-style-type: none"> <li>• 1 to 2.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>
	1 <sup>st</sup> degree	Possessing more than 10 lbs of marijuana preparations	Class C felony <ul style="list-style-type: none"> <li>• 1 to 5.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$15,000</li> </ul>

## DRUG SALE CRIMES

Table 2 describes the different drug sale crimes and their penalties in New York. Penalties range from up to three months in prison for 5<sup>th</sup> degree selling marijuana to up to 20 years in prison for 1<sup>st</sup> degree selling controlled substances.

Table 2: Drug Sale Crimes in New York

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
Selling controlled substances (NY Penal §§ 220.31 to 220.44)	5 <sup>th</sup> degree	Selling a controlled substance	Class D felony <ul style="list-style-type: none"> <li>• 1 to 2.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>
	4 <sup>th</sup> degree	Selling: <ul style="list-style-type: none"> <li>• a narcotic preparation</li> <li>• at least 10 oz dangerous depressant or at least 2 lbs depressants</li> <li>• concentrated cannabis</li> <li>• at least 50 mg PCP</li> <li>• methadone</li> <li>• PCP with a prior drug conviction</li> <li>• at least 4,000 mg ketamine</li> </ul>	Class C felony <ul style="list-style-type: none"> <li>• 1 to 5.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$15,000</li> </ul>

Table 2 (continued)

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
		<ul style="list-style-type: none"> <li>a controlled substance on (1) school grounds, (2) a school bus, or (3) a child day care or an education facility up to kindergarten or grounds or public areas within 1,000 feet of them</li> <li>at least 28 g GHB preparation</li> </ul>	
	3 <sup>rd</sup> degree	Selling: <ul style="list-style-type: none"> <li>a narcotic drug</li> <li>a stimulant, hallucinogen, hallucinogenic substance, or LSD with a prior drug conviction</li> <li>at least 1 g stimulant</li> <li>at least 25 mg hallucinogen</li> <li>at least 1 g hallucinogenic substance</li> <li>at least 1/8 oz preparations containing methamphetamine or its precursors</li> <li>at least 250 mg PCP</li> <li>a narcotic preparation to someone under age 21</li> </ul>	Class B felony <ul style="list-style-type: none"> <li>1 to 9 years in prison</li> <li>Alternate penalty of up to one year</li> <li>Up to \$30,000</li> </ul>
	2 <sup>nd</sup> degree	Selling at least: <ul style="list-style-type: none"> <li>1/2 oz preparation containing a narcotic drug</li> <li>1/2 oz preparations containing methamphetamine or its precursors</li> <li>5 g stimulants</li> <li>5 mg LSD</li> <li>25 mg hallucinogen</li> <li>5 g hallucinogenic substance</li> <li>360 mg methadone</li> </ul>	Class A-II felony <ul style="list-style-type: none"> <li>3 to 10 years in prison</li> <li>Up to \$50,000</li> </ul>
	1 <sup>st</sup> degree	Selling at least: <ul style="list-style-type: none"> <li>2 oz preparation containing a narcotic drug</li> <li>2,880 mg methadone</li> </ul>	Class A-I felony <ul style="list-style-type: none"> <li>8 to 20 years in prison</li> <li>Up to \$100,000</li> </ul>
Selling near schools (NY Penal § 220.44)	-	Selling on (1) grounds of a child day care or an education facility up to kindergarten or public areas within 1,000 feet of them, knowing the sale takes place there; (2) school grounds; or (3) a school bus: <ul style="list-style-type: none"> <li>a narcotic preparation</li> <li>at least 10 oz dangerous depressant or at least 2 lbs depressant</li> </ul>	Class B felony <ul style="list-style-type: none"> <li>2 to 9 years in prison</li> <li>Alternate penalty of up to one year</li> <li>Up to \$30,000</li> </ul>

Table 2 (continued)

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
		<ul style="list-style-type: none"> <li>• concentrated cannabis</li> <li>• at least 50 mg PCP</li> <li>• methadone</li> <li>• PCP with a prior drug conviction</li> <li>• a narcotic drug</li> <li>• a stimulant, hallucinogen, hallucinogenic substance, or LSD with a prior drug conviction</li> <li>• at least 1 g stimulant</li> <li>• at least 1 mg LSD</li> <li>• at least 25 mg hallucinogen</li> <li>• at least 1 g hallucinogenic substance</li> <li>• at least 1/8 oz preparations containing methamphetamine or its precursors</li> <li>• at least 250 mg PCP</li> </ul> <p>Selling on school grounds or a school bus at least 4,000 mg ketamine</p>	
Selling controlled substances to minors (NY Penal § 220.48)	-	Committing 4th or 3rd degree criminal sale of a controlled substance and the: <ul style="list-style-type: none"> <li>• seller is over 21 and</li> <li>• buyer is under 17</li> </ul>	Class B felony <ul style="list-style-type: none"> <li>• 2 to 9 years in prison</li> <li>• Up to \$30,000 fine</li> </ul>
Selling marijuana (NY Penal §§ 221.35 to 221.55)	5 <sup>th</sup> degree	Selling: <ul style="list-style-type: none"> <li>• 2 g or less marijuana preparations or</li> <li>• one marijuana cigarette</li> </ul>	Class B misdemeanor <ul style="list-style-type: none"> <li>• Up to 3 months in prison</li> <li>• Up to \$500</li> </ul>
	4 <sup>th</sup> degree	Selling marijuana other than the amounts specified under the 5 <sup>th</sup> degree crime	Class A misdemeanor <ul style="list-style-type: none"> <li>• Up to 1 year in prison</li> <li>• Up to \$1,000</li> </ul>
	3 <sup>rd</sup> degree	Selling more than 25 g marijuana preparations	Class E felony <ul style="list-style-type: none"> <li>• 1 to 1.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>

Table 2 (continued)

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
	2 <sup>nd</sup> degree	Selling: <ul style="list-style-type: none"> <li>• more than 4 oz marijuana preparations or</li> <li>• marijuana to someone under age 18</li> </ul>	Class D felony <ul style="list-style-type: none"> <li>• 1 to 2.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>
	1 <sup>st</sup> degree	Selling more than 16 oz marijuana preparations	Class C felony <ul style="list-style-type: none"> <li>• 1 to 5.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$15,000</li> </ul>

## OTHER DRUG CRIMES

In Table 3, we describe several other drug-related crimes and their penalties.

Table 3: Other Drug-Related Crimes

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
Using a child to commit controlled substance crimes (NY Penal § 220.28)	-	Person at least age 18 committing a felony controlled substance sale or attempted sale crime knowingly using a child under age 16 to make the sale or attempt	Class E felony <ul style="list-style-type: none"> <li>• 1 to 1.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>
Manufacturing methamphetamine (NY Penal §§ 220.73 to 220.75)	3 <sup>rd</sup> degree	Possessing certain combinations of laboratory equipment and methamphetamine precursors, chemical reagents, or solvents in the same location with intent to use or knowing another intends to use them to manufacture methamphetamine	Class D felony <ul style="list-style-type: none"> <li>• 1 to 2.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$5,000</li> </ul>

Table 3 (continued)

<b>Crime</b>	<b>Degree</b>	<b>Conduct</b>	<b>Penalty</b>
	2 <sup>nd</sup> degree	Committing 3rd degree manufacturing methamphetamine: <ul style="list-style-type: none"> <li>• in the presence of someone under age 16 while the offender is at least 5 years older or</li> <li>• with a prior conviction in the past 5 years of certain methamphetamine crimes</li> </ul>	Class C felony <ul style="list-style-type: none"> <li>• 1 to 5.5 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$15,000</li> </ul>
	1 <sup>st</sup> degree	Committing 2nd degree manufacturing methamphetamine with a prior conviction of any degree of manufacturing methamphetamine crime	Class B felony <ul style="list-style-type: none"> <li>• 1 to 9 years in prison</li> <li>• Alternate penalty of up to one year</li> <li>• Up to \$30,000</li> </ul>
Operating as a major trafficker (NY Penal § 220.77)	-	<ul style="list-style-type: none"> <li>• Directing a controlled substance organization with sales greater than \$75,000 within a 12 month period</li> <li>• Knowingly selling narcotics with sales greater than \$75,000 within a six month period or</li> <li>• Possessing with intent to sell narcotics with a value of \$75,000 or more</li> </ul>	Class A-I felony  Court must set an indeterminate sentence (the court sets a minimum and maximum amount of imprisonment that may be required as opposed to a set term) with a: <ul style="list-style-type: none"> <li>• minimum prison sentence of 15 years but as much as 25 years and</li> <li>• maximum of life</li> <li>• Up to \$100,000</li> </ul>

### **ENHANCED PENALTIES**

New York law provides enhanced penalties for repeat drug offenders. Generally, New York law punishes someone as a "second felony drug offender" if he or she stands convicted of a drug felony and was previously sentenced for a felony within the past 10 years, excluding time in prison (NY Penal §§ 70.70 and 70.71). Table 4 shows the enhanced prison penalties for these repeat offenders. All sentences must include a period of post-release supervision.

**Table 4: Enhanced Prison Penalties for Second Felony Drug Offenders**

<b><i>Current Conviction</i></b>	<b><i>Penalty With Prior Felony Conviction</i></b>	<b><i>Penalty With Prior Violent Felony Conviction</i></b>
A-I felony	12 to 24 years	15 to 30 years
A-II felony	6 to 14 years	8 to 17 years
B felony	2 to 12 years	6 to 15 years
C felony	1.5 to 8 years*	3.5 to 9 years
D felony	1.5 to 4 years*	2.5 to 4.5 years
E felony	1.5 to 2 years*	2 to 2.5 years

\*For a class C, D, or E felony, the court can impose up to one year if, considering the crime's nature and circumstances and the defendant's history and character, imprisonment is necessary but the normal sentence would be unduly harsh.

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