

§1105-C. Aggravated furnishing of scheduled drugs

1. A person is guilty of aggravated furnishing of a scheduled drug if the person violates section 1106 and:

A. The person furnishes a scheduled drug to a child who is in fact less than 18 years of age and the drug is:

- (1) A schedule W drug. Violation of this subparagraph is a Class B crime;
- (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
- (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
- (4) A schedule Z drug. Violation of this subparagraph is a Class C crime; [PL 2001, c. 383, §119 (NEW); PL 2001, c. 383, §156 (AFF).]

B. At the time of the offense, the person has one or more prior convictions for any Class A, B or C offense under this chapter or for engaging in substantially similar conduct to that of the Class A, B or C offenses under this chapter in another jurisdiction and the drug is:

- (1) A schedule W drug. Violation of this subparagraph is a Class B crime;
- (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
- (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
- (4) A schedule Z drug. Violation of this subparagraph is a Class C crime.

Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years; [PL 2007, c. 476, §41 (AMD).]

C. [PL 2001, c. 667, Pt. D, §27 (RP); PL 2001, c. 667, Pt. D, §36 (AFF).]

C-1. At the time of the offense, the person possesses a firearm in the furtherance of the offense, uses a firearm, carries a firearm or is armed with a firearm, and the drug is:

- (1) A schedule W drug. Violation of this subparagraph is a Class B crime;
- (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
- (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
- (4) A schedule Z drug. Violation of this subparagraph is a Class C crime; [PL 2001, c. 667, Pt. D, §28 (NEW); PL 2001, c. 667, Pt. D, §36 (AFF).]

D. At the time of the offense, the person furnishes cocaine in a quantity of 112 grams or more. Violation of this paragraph is a Class B crime; [PL 2021, c. 396, §5 (AMD).]

E. At the time of the offense, the person is on a school bus or within 1,000 feet of the real property comprising a private or public elementary or secondary school or a safe zone as defined in section 1101, subsection 23 and the drug is:

- (1) A schedule W drug. Violation of this subparagraph is a Class B crime;
- (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
- (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
- (4) A schedule Z drug. Violation of this subparagraph is a Class C crime.

For purposes of this paragraph, "school bus" has the same meaning as defined in Title 29-A, section 2301, subsection 5; [PL 2005, c. 415, §3 (AMD).]

F. At the time of the offense, the person enlists or solicits the aid of or conspires with a child who is in fact less than 18 years of age to furnish a scheduled drug and the drug is:

- (1) A schedule W drug. Violation of this subparagraph is a Class B crime;
- (2) A schedule X drug. Violation of this subparagraph is a Class C crime;
- (3) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
- (4) A schedule Z drug. Violation of this subparagraph is a Class C crime; [PL 2001, c. 383, §119 (NEW); PL 2001, c. 383, §156 (AFF).]

G. At the time of the offense, the person furnishes methamphetamine in a quantity of 100 grams or more. Violation of this paragraph is a Class B crime; [PL 2001, c. 667, Pt. D, §31 (AMD); PL 2001, c. 667, Pt. D, §36 (AFF).]

H. At the time of the offense, the person furnishes heroin in a quantity of 6 grams or more or 270 or more individual bags, folds, packages, envelopes or containers of any kind containing heroin. Violation of this paragraph is a Class B crime; [PL 2001, c. 667, Pt. D, §31 (AMD); PL 2001, c. 667, Pt. D, §36 (AFF).]

I. At the time of the offense, the person furnishes 300 or more pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin, or any quantity of pills, capsules, tablets, units, compounds, mixtures or substances that, in the aggregate, contains 8,000 milligrams or more of oxycodone or 1,000 milligrams or more of hydromorphone. Violation of this paragraph is a Class B crime; [PL 2003, c. 476, §6 (AMD).]

J. At the time of the offense, the person furnishes a quantity of 300 or more pills, capsules, tablets or units containing 3, 4-methylenedioxymethamphetamine, MDMA, or any other drug listed in section 1102, subsection 1, paragraph O. Violation of this paragraph is a Class B crime; [PL 2003, c. 476, §6 (AMD).]

K. Death of another person is in fact caused by the use of one or more drugs and the drug furnished by the defendant is a contributing factor to the death of the other person. A violation of this paragraph is a Class B crime. It is an affirmative defense to prosecution under this paragraph that the drug furnished was lawfully possessed by the defendant prior to furnishing and that the death was not a reasonably foreseeable consequence of the use of that scheduled drug. In determining whether the death was reasonably foreseeable, the jury shall consider:

- (1) The factual circumstances surrounding the furnishing of the drug;
- (2) The total quantity of the drug furnished;
- (3) The dosage of the units furnished;
- (4) The nature of the drug;
- (5) The overdose risk presented by use of the drug; and
- (6) Any safety warnings provided to the defendant at the time of dispensing the drug; or [PL 2017, c. 460, Pt. F, §5 (AMD).]

L. Serious bodily injury is in fact caused by the use of that scheduled drug and the drug is a schedule W drug. A violation of this paragraph is a Class C crime. It is an affirmative defense to prosecution under this paragraph that the drug furnished was lawfully possessed by the defendant prior to furnishing and that the serious bodily injury was not a reasonably foreseeable consequence of the use of that scheduled drug. In determining whether the serious bodily injury was reasonably foreseeable, the jury shall consider:

- (1) The factual circumstances surrounding the furnishing of the drug;
- (2) The total quantity of the drug furnished;

- (3) The dosage of the units furnished;
- (4) The nature of the drug;
- (5) The overdose risk presented by use of the drug; and
- (6) Any safety warnings provided to the defendant at the time of dispensing the drug. [PL 2003, c. 476, §7 (NEW).]

[PL 2021, c. 396, §5 (AMD).]

2. If a person uses a motor vehicle to facilitate the aggravated furnishing of a scheduled drug, the court may, in addition to other authorized penalties, suspend the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license or permit. The Secretary of State may not reinstate the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.

[PL 2001, c. 383, §119 (NEW); PL 2001, c. 383, §156 (AFF).]

3. It is an affirmative defense to prosecution under this section that the substance furnished is hemp.

[PL 2019, c. 12, Pt. B, §5 (AMD).]

SECTION HISTORY

PL 2001, c. 383, §119 (NEW). PL 2001, c. 383, §156 (AFF). PL 2001, c. 667, §§D27,28,31, 32 (AMD). PL 2001, c. 667, §D36 (AFF). PL 2003, c. 1, §8 (AMD). PL 2003, c. 61, §4 (AMD). PL 2003, c. 476, §§6,7 (AMD). PL 2005, c. 415, §3 (AMD). PL 2007, c. 476, §41 (AMD). PL 2017, c. 460, Pt. F, §5 (AMD). PL 2019, c. 12, Pt. B, §5 (AMD). PL 2021, c. 396, §5 (AMD).

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