

**CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
AND PRESCRIPTIONS IN THE SECOND DEGREE**
Penal Law § 178.20
Committed on or after Nov. 1, 1995

The (*specify*) count is Criminal Diversion of Prescription Medications and Prescriptions in the Second Degree.

Under our law, 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.

The following terms used in that definition have a special meaning:

CRIMINAL DIVERSION ACT means an act or acts in which a person knowingly:

Select appropriate alternative(s):

(a) transfers or delivers, in exchange for anything of pecuniary value, a prescription medication or device with knowledge or reasonable grounds to know that the recipient has no medical need for it; or

(b) receives, in exchange for anything of pecuniary value, a prescription medication or device with knowledge or reasonable grounds to know that the seller or transferor is not authorized by law to sell or transfer such prescription medication or device; or

(c) transfers or delivers a prescription in exchange for anything of pecuniary value; or

(d) receives a prescription in exchange for anything of pecuniary value.¹

¹ Penal Law § 178.00 (3).

PRESCRIPTION MEDICATION OR DEVICE means any article for which a prescription is required in order to be lawfully sold, delivered or distributed by any person authorized by law to engage in the practice of the profession of pharmacy.²

PRESCRIPTION means a direction or authorization by means of a written prescription form or an oral prescription which permits a person to lawfully obtain a prescription medication or device from any person authorized to dispense such prescription medication or device.³

A person KNOWINGLY acts with respect to conduct or to a circumstance when that person is aware that his or her conduct is of such nature or that such circumstance exists.⁴

If one of the following is placed in issue, add appropriate provision:

The conduct prohibited by this law does not apply to

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;

a duly licensed pharmacist acting in good faith in the lawful course of the practice of pharmacy;

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

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case

² Penal Law § 178.00 (1).

³ Penal Law § 178.00 (2).

⁴ Penal Law § 15.05 (2).

beyond a reasonable doubt each of the following (three/four) elements:

1. That on or about (*date*) in the county of (*County*), the defendant (*defendant's name*), committed a criminal diversion act⁵;

2. That the defendant did so knowingly; and

3. That the value of the benefit exchanged was in excess of three thousand dollars.

If one of the following is placed in issue, add appropriate provision as element four.

4. The defendant was not

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;

a duly licensed pharmacist acting in good faith in the lawful course of the practice of pharmacy;

a person acting in good faith seeking treatment for a medical condition or assisting another person to obtain treatment for a medical condition.⁶

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

⁵ Where a specific act of criminal diversion is alleged, a court may wish to add: "in that (*specify conduct*)" at the end of this sentence.

⁶ Penal Law § 178.05 (1).

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.