

COMPARISON OF DRUG SENTENCES: CURRENT LAW, S..01441, A.07078

Legal Aid Society, May 7, 2004

NOTE: This chart only illustrates penalties relating to “narcotic drugs,” such as heroin or cocaine. It does not cover other kinds of controlled substances. Weights specified are aggregate weights unless otherwise noted.

FURTHER NOTE: An “Attempt” at most of the following offenses (generally a fictitious offense, employed for plea bargaining purposes) is one grade lower than the underlying offense. Thus, by plea bargaining down to a C felony “Attempted Sale” from a B felony Sale, a defendant under current law is able to take advantage of the C felony sentencing provisions, which, for a first offender, do not require imprisonment. One feature of the Assembly bill is that, without changing this basic rule, a defendant under some circumstances would be able to avoid a state prison term for a B felony sale without plea bargaining.

When the charge is an A felony, the Attempt remains an A felony, so in these cases, the plea-bargainer must plead to a substantive offense of lower degree. Current law restricts the ability of an A felony defendant to “plead down.” The Assembly bill slightly relaxes this restriction.

| | <u>Current</u> | <u>Senate</u> | <u>Assembly</u> |
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| simple possession, less than 1/8 oz. | Misdemeanor, same up to 1 year | same | |
| possession of at least 500 mgs. of cocaine by pure weight (=crack) | D felony, indet., up to 7 years | same | same |
| same, with predicate felony, any kind | mand.minimum, 2-to-4 years | same | same, but eligible for CADAT* |

*CADAT, court-approved drug abuse treatment: if person is eligible (NOTE: prior violent felony conviction makes one ineligible unless person convicted was a victim of domestic violence that led to the crime), Court may place person in CADAT over D.A.’s objection after giving D.A. 21-to-35 days to be heard on the issue)

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| possession, 1/8 oz. or more | C felony, indet., up to 15 years; | same | same |
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| | Probation (1-day split) is allowed | | |
| same, with predicate felony, any kind | mand.minimum, 3-to-6 years <u>Current</u> | same <u>Senate</u> | same, but eligible for CADAT <u>Assembly</u> |
| possession of less than 2 grams (=.07 oz. or about 31 grains, apparently by pure weight) with intent to sell <u>Or</u> straight possession of ½ oz. or more, <u>Or</u> Sale of less than 2 grams | B felony, indet., up to 25 years; mandatory min. of 1-to-3 years | same | B-II felony; allows 6-month split as an alternative to indeterminate sent.; also eligible for CADAT |
| same, with predicate non-violent felony | mand.minimum, 4 ½ to 9 years | same | mand.minimum, 3-to-6 years; also eligible for CADAT |
| same, with predicate violent felony | same as above | same | same (as current law); not eligible for CADAT |
| Possession of 2 grams or more with intent to sell <u>Or</u> Straight possession of one oz. or more <u>Or</u> Sale of 2 grams or more | B felony, up to same 25 years; mand. min., 1-to-3 years | same | same (as current law), but eligible for CADAT |
| same, with predicate non-violent felony | mand.min., 4 ½ -to-9 years | same | same, but eligible for CADAT |
| same, with predicate violent felony | same as above | same | same (as current law); not eligible for CADAT |
| Using a child under 16 to help effectuate a sale | no special provision | same | E felony, makes one ineligible for CADAT |

(defendant must be 18 or older)

or for special B-II sentence provisions (BUT: 18-year-old defendant might still be eligible for Y.O. treatment)

| | <u>Current</u> | <u>Senate</u> | <u>Assembly</u> |
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| Sale, by a person 21 or older, to a child under 16** | no special provision | same | B felony, makes one ineligible for CADAT or B-II sentence provisions (**if buyer is 16 or 17, seller is also ineligible) |
| Sale over the Internet | no special provision | same | B felony, makes one ineligible for CADAT or B-II sentences |
| Sale on school grounds or within 1000 feet of school property line | mand.min. for 1 st offense is 2-to-6 instead of 1-to-3 | same | ineligible for CADAT and B-II provisions only if sale is actually on school grounds |
| physically possessing a gun | C violent felony | same | mandatory .minimum |
| with the intent to use it against another, while selling or trying to sell drugs | under general law; mand.min.determ. sent., 3 1/2 years | | is 5 years |
| Possession of 2 oz. or more; less than 4 oz. | A-II felony; Life Sentence; minimum from 3 to 8 1/3 years | determinate sentence; term from 3 years (earliest possible release at 2 1/7 yrs.) to 14 years | B felony, governed by B felony rules as above, including CADAT eligibility |
| Sale of 1/2 oz. or more, less than 1 oz. | same as above | same as above | same as above |

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| Sale of 1 oz. or more, less than 2 oz. | same as above | same as above | A-II felony; determinate sent., term from 3 years (earliest possible release at 2 1/7 yrs.) to 10 yrs. |
| | <u>Current</u> | <u>Senate</u> | <u>Assembly</u> |

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| Above A-II felonies, with prior non-violent felony | Minimum from 6 to 12 1/2 yrs. | determ.sent.; term from 6 yrs. (earliest possible release at 4 2/7 yrs.) to 18 years | if B felony based on wt. (see above), indet., mand.min. of 4 1/2 -to-9, CADAT-eligible if A-II felony based on wt., determ.sent. with term from 6 1/2 yrs. to 15 years |
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| Above A-II felonies, with prior violent felony | same as above, no special provision | determ.sent.; term from 9 yrs. (earliest possible release at 6 3/7 yrs.) to 25 years | if B felony based on wt., indet., mand.min. of 4 1/2 -to-9, not CADAT-eligible if A-II felony based on wt., determ.sent. with term from 8 yrs. (earliest possible release at 6 6/7 yrs.)to 17 years**** |
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****under Assembly bill, persons with prior violent felony convictions are ineligible for merit time; Senate bill lacks this provision

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| Possession of 4 oz. or more, less than 8 oz. | A-I felony, mandatory minimum 15-Life; maximum 25-Life (earliest possible release date if given minimum: 10 years) | A-I felony, determ. sentence; term from 10 years (earliest possible release at 7 1/7 yrs.) to 20 yrs. | A-II felony, determ. sentence ranging from 3 to 10 years; earliest possible release after 5/7 of term |
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| | <u>Current</u> | <u>Senate</u> | <u>Assembly</u> |
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| Sale of 2 oz. or more, less than 4 oz. | same as above | same as above | same as above |
| Same as above, with prior non-violent felony | same as above | sent. range from 12 years (earliest possible release at 8 4/7 yrs.) to 24 yrs. | A-II, sent. range from 6 ½ to 15 years |
| Same as above, with prior violent felony | same as above | sent. range from 15 years (earliest possible release at 10 5/7 yrs.) to 30 yrs. | A-II, sent. range from 8 to 17 years (But not eligible for merit time) |
| Possession of 8 oz. or more, <u>Or</u> Sale of 4 oz. or more | A-I felony, same as above | A-I, determ. sent., range from 10 yrs. to 20 yrs. | A-I, determ.sent., range from 8 years (earliest possible release at 5 5/7 yrs.) to 20 years |
| Same as above, with prior non-violent felony | same as above | range from 12 to 24 years | range from 12 to 24 yrs. (same as Senate) |
| Same as above, with prior violent felony | same as above | range from 15 to 30 years; earliest possible release with merit time at 10 5/7 yrs.) | range from 15 to 30 yrs.; earliest possible release at 12 6/7 yrs. (No merit time) |
| Persistent felony drug offender | such a person is theoretically able to receive 25-to-Life as a discretionary persistent felon under P.L. § 70.10 | determ.sent.; range from 20 to 40 years; application is discretionary | No change in current law |
| Trafficking through a Controlled Substance Organization (drug kingpin) | no special provision | no special provision | Life sentence; minimum from 15 to 30 years |