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MEMORANDUM COMPARING DANGEROUS  
DRUG OFFENSES IN CURRENT AND  
PROPOSED PENAL LAWS

Article 166 of the Penal Law, "Public Health", encompassing Sections 1740-1764 has been revised in the proposed New York Penal Law primarily by transferring many of its sections to the Public Health, Education and Agriculture and Markets Laws, and setting forth a specific new Article 225: Narcotics Offenses, under Title M - Offenses Against Public Health and Morals.

The sections transferred to the Public Health, Education and Agriculture and Markets laws are for the most part rarely invoked: i.e., obstructing a health officer in performance of his duty (Section 1741), careless distribution of medicines, drugs and chemicals (Section 1747), adulteration of natural fruit juices (Section 1749), contamination of salt wells (Section 1758) etc.

There are three sections of the present Penal Law which have been transferred to the Public Health Law which are fairly frequently prosecuted. They are: Section 1747b relating to sale or possession of barbiturates; Section 1747c relating to sale or possession of amphetamines; and Section 1747d relating to sale and possession of hypodermic syringes and needles. I believe that these sections other than punishment should be transferred to the Public Health Law and that there should be separate sections in the new Penal Law making unlawful possession of barbiturates, amphetamines and hypodermic syringes and needles misdemeanors

and sale of barbiturates and amphetamines felonies. If this is done, new Article 225 might read "DANGEROUS DRUG OFFENSES" instead of "NARCOTICS OFFENSES."

It should also be noted that Section 889b of the current Penal Law, making it a felony to forge a doctor's prescription, is changed to a misdemeanor under Section 175.05 and 175.20 of the proposed Penal Law. I believe that forging a doctor's prescription should remain a felony and this could be easily accomplished by inserting doctor's prescriptions in the instruments and writings mentioned in proposed Section 175.10.

With respect to the most common narcotic crimes, there are a few substantive and procedural changes:

1 - Mandatory minimum sentences have been eliminated. This is in line with the general philosophy of the new Penal Law discouraging the imposition of such sentences.

2 - The maximum punishment for sale to a minor under twenty-one years of age has been increased from fifteen years to twenty-five years. (cf., 1751-1 and 225.30).

3 - The maximum punishment for feloniously possessing a narcotic drug (current law section 1751-3) has been decreased from ten years to seven years. (Section 225.10 par. 2, Criminally possessing narcotics in the second degree.) I believe that this is a reasonable change in that the amounts involved are relatively small.

4 - Current Section 1751-2 relating to feloniously possessing a narcotic drug with intent to sell has been split into two sections, Section 225.10 par. 1, Criminally possessing narcotics in the second degree and 225.15 Criminally possessing narcotics in the first degree. What the proposed changes do is to make a distinction between the large scale seller and wholesaler and the small scale peddler who has a small amount of narcotics in his possession with intent to sell. The small scale seller is treated in the same manner as the person who feloniously possesses a narcotic drug.

However, Section 225.15 makes mere possession of more than 100 marijuana cigarettes, an ounce or more of heroin, morphine, cocaine or marijuana, two or more ounces of opium or any of the other narcotic drugs as defined in the Public Health Law, subject to a maximum punishment of fifteen years. This change is worthwhile since the People would no longer be required to establish that the person in possession of such a large amount had it with intent to sell, thus eliminating the often confusing necessity of charging presumptions to a jury. The mere possession of such an amount would constitute the major crime.

The final change is made by eliminating the requirement of the current Section 1751-4 provision that in order <sup>live</sup>presumptively to establish possession by all occupants of an automobile of narcotics found in the automobile that the amount be over an ounce of heroin, morphine, cocaine, marijuana, etc. Under the new change (Section 225.20) the presence of any amount of narcotics in an automobile is presumptive evidence

of its possession by all the occupants.

5 - There are other changes but these primarily involve greater precision and tightening of language.

I think that the changes that have been made are salutary and reasonable. They will help in prosecuting the large scale seller and also facilitate the taking of lesser pleas in any degree.