

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
THIRD DEGREE  
(B Felony)  
(Sale of a Narcotic Preparation  
to a Person Less Than 21 Years Old)  
PENAL LAW 220.39(9)  
(Committed on or after Sept. 1, 1979)**

**(Revised April 4, 2003)<sup>1</sup>**

The \_\_\_\_\_ count is Criminal Sale of a Controlled Substance in the Third Degree.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Third Degree when that person knowingly and unlawfully sells a narcotic preparation to a person less than twenty-one years old.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “narcotic preparation,” “sell,” “knowingly,” and “unlawfully.”

The term NARCOTIC PREPARATION includes (specify).<sup>2</sup>

SELL means to sell, exchange, give or dispose of to another.

[Sell also includes an offer or agreement to sell even if actual delivery does not occur, provided that, at the time of the offer or agreement, the person has the intent and ability to make the sale. An intent is a conscious objective or purpose. Thus, a person acts with intent to sell when that person's conscious objective or purpose is to sell.]<sup>3</sup>

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<sup>1</sup> The revision was for the purpose of re-defining the term “sale” as it applied to an offer or agreement to sell.

<sup>2</sup> See Penal Law § 220.00(8).

<sup>3</sup> See Penal Law § 220.00(1); *People v. Samuels*, 90 N.Y.2d 20 (2002).

A person KNOWINGLY sells (specify) when that person is aware that he or she is selling a substance which contains (specify).<sup>4</sup> For this charge, the People need not prove that the defendant was aware that the person to whom the (specify) was sold was less than twenty-one years old.<sup>5</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it.<sup>6</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to sell (specify).

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), sold (specify);
2. That the defendant did so knowingly and unlawfully; and
3. That the person to whom the (specify) was sold was less than twenty-one years of age.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Sale of a Controlled Substance in the Third Degree as charged in the \_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of

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<sup>4</sup> See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

<sup>5</sup> See Penal Law § 15.20(3).

<sup>6</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).

Criminal Sale of a Controlled Substance in the Third Degree as charged in the \_\_\_ count.