

**CRIMINAL SALE OF A
CONTROLLED SUBSTANCE
FIFTH DEGREE
(D Felony)
PENAL LAW 220.31
(Committed on or after Sept. 1, 1979)**

The _____ count is Criminal Sale of a Controlled Substance in the Fifth Degree.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Fifth Degree when that person knowingly and unlawfully sells a controlled substance.

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: “controlled substance,” “sell,” “knowingly,” and “unlawfully.”

The term CONTROLLED SUBSTANCE includes (specify).¹

SELL means to sell, exchange, give or dispose of to another [*or* to offer or agree to do the same].²

A person KNOWINGLY sells (specify) when that person is aware that he or she is selling a substance which contains (specify).³

A person UNLAWFULLY sells (specify) when that person has no legal right to sell that substance.⁴ 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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), sold (specify); and
2. That the defendant did so knowingly and unlawfully.

See, Penal Law § 220.00(5).

See, Penal Law § 220.00(1).

See, Penal Law § 15.05(2) and *People v Ryan*, 82 NY2d 497 (1993).

See, Penal Law § 220.00(2) and Public Health Law § 3396(1).

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

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Sale of a Controlled Substance in the Fifth Degree as charged in the ___ count.