

**USE OF A CHILD TO COMMIT A CONTROLLED  
SUBSTANCE OFFENSE  
(E Felony)  
PENAL LAW 220.28  
(Committed on or after Nov. 1, 2006)**

The \_\_\_\_\_ count is Use of a Child to Commit a Controlled Substance Offense.

Under our law, a person is guilty of Use of a Child to Commit a Controlled Substance Offense when, being eighteen years old or more, he or she commits a felony sale or felony attempted sale of a controlled substance<sup>1</sup> and, as part of that criminal transaction, knowingly uses a child to effectuate such felony sale or felony attempted sale of such 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,” “commits a felony sale or felony attempted sale of a controlled substance,” “child,” “uses a child to effectuate the felony sale or felony attempted sale of such controlled substance,” and “knowingly.”

The term CONTROLLED SUBSTANCE includes (specify).<sup>2</sup>

COMMITTS A FELONY SALE OR FELONY ATTEMPTED SALE OF A CONTROLLED SUBSTANCE MEANS (specify and define if not separately charged).<sup>3</sup>

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<sup>1</sup> The statute reads “in violation of this article.” This language has been omitted from the charge for clarity.

<sup>2</sup> See Penal Law § 220.00(5).

<sup>3</sup> If the jury has already been instructed on a sale or attempted sale felony, reference to that instruction here may suffice. Otherwise, instruction on Attempt and/or Criminal Sale of a Controlled Substance in the Fifth Degree should be given (see CJI2d[NY] Penal Law §§ 110.00, 220.31).

CHILD means a person less than sixteen years of age.

USES A CHILD TO EFFECTUATE THE FELONY SALE OR FELONY ATTEMPTED SALE OF SUCH CONTROLLED SUBSTANCE means conduct by which the actor: (a) conceals such controlled substance on or about the body or person of such child for the purpose of effectuating the criminal sale or attempted sale of such controlled substance to a third person; or (b) directs, forces or otherwise requires such child to sell or attempt to sell or offer direct assistance to the defendant in selling or attempting to sell such controlled substance to a third person.

A person KNOWINGLY uses a child to effectuate the felony sale or felony attempted sale of such controlled substance when that person is aware that he or she is doing so.<sup>4</sup>

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), being eighteen years old or more, committed a felony sale or felony attempted sale of a controlled substance; and
2. That the defendant, as part of that criminal transaction, knowingly used a child to effectuate such felony sale or felony attempted sale of such controlled substance.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the

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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.

defendant guilty of the crime of Use of a Child to Commit a Controlled Substance Offense 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 Use of a Child to Commit a Controlled Substance Offense as charged in the \_\_\_\_ count.