

**USE OF A CHILD TO COMMIT A CONTROLLED
SUBSTANCE OFFENSE**
Penal Law § 220.28
(Committed on or after Nov. 1, 2006)¹

The (specify) 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 substance² and, as part of that criminal transaction, knowingly uses a child to effectuate such felony sale or felony attempted sale of such controlled substance.

The following terms used in that definition have a special meaning:

The term CONTROLLED SUBSTANCE includes (specify).³

COMMITTS A FELONY SALE OR FELONY ATTEMPTED SALE OF A CONTROLLED SUBSTANCE MEANS (specify and define if not separately charged).⁴

CHILD means a person less than sixteen years of age.

¹ In 2022, this charge was amended to make clear that the People are not required to prove that the defendant knew the age of the child and the defendant may not interpose ignorance of the child's age as a defense.

² The statute reads "in violation of this article." This language has been omitted from the charge for clarity.

³ See Penal Law § 220.00(5).

⁴ If the jury has already been instructed on a felony sale or attempted sale, reference to that instruction here may suffice. Otherwise, an 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).

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 using a child to effectuate the sale or attempted sale.⁴

Knowledge by the defendant of the age of such child is not an element of the offense and it is not a defense that the defendant did not know the age of the child or believed such age to be the same as or greater than that specified in the statute.⁵

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), 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 an individual to effectuate such felony sale or felony attempted sale of such controlled substance; and

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

⁵ Penal Law § 15.20(3).

3 That the individual used to effectuate such felony sale or felony attempted sale of such controlled substance was a child.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt one or more of those elements, you must find the defendant not guilty of this crime.