

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
IN THE FIFTH DEGREE
Penal Law § 220.31
(Committed on or after Sept. 1, 1979)
(Revised April 4, 2003)¹**

The (specify) 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.

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

The term CONTROLLED SUBSTANCE includes (specify).²

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.]³

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

¹ The revision was for the purpose of re-defining the term "sale" as it applied to an offer or agreement to sell.

² See Penal Law § 220.00(5).

³ See Penal Law § 220.00(1); *People v. Samuels*, 99 N.Y.2d 20 (2002).

(specify).⁴

A person UNLAWFULLY sells (specify) when that person has no legal right to sell that substance.⁵ 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.

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

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

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

⁵ See Penal Law § 220.00(2) and Public Health Law § 3396(1).