

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
IN THE FOURTH DEGREE
Penal Law § 220.34(8)
(Committed on or after September 1,1998)**

The (specify) count is Criminal Sale of a Controlled Substance in the Fourth Degree.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Fourth Degree when that person knowingly and unlawfully sells a controlled substance¹ and when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds.

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

¹ At this point, subdivision eight reads: "in violation of section 220.31 of this article." That section makes it a crime to knowingly and unlawfully sell a controlled substance.

² See Penal Law § 220.00(5).

³ See Penal Law § 220.00(1); *People v. Samuels*, 99 NY2d 20 (2002).

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

The GROUNDS OF A CHILD DAY CARE OR EDUCATIONAL FACILITY means:

(a) in or on or within any building, structure, athletic playing field, a playground or land contained within the real property boundary line of a public or private child day care center⁶ or nursery, pre-kindergarten or kindergarten, or

(b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such facility or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such facility. An "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.⁷

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).

⁶ At this point the statute states: "as such term is defined in paragraph (c) of subdivision one of section three hundred ninety of the social services law." If in issue, that definition is:

"Child day care center" shall mean any program or facility caring for children for more than three hours per day per child in which child day care is provided by a child day care provider except those programs operating as a group family day care home [as such term is defined in paragraph (d) of this subdivision], a family day care home, [as such term is defined in paragraph (e) of this subdivision], and a school-age child care program, [as such term is defined in paragraph (f) of this subdivision].

⁷ The second sentence of definition of the instant crime in Penal Law § 220.34(8) specifies that the phrase "the grounds of a child day care or educational facility" shall have the same meaning as provided for in Penal Law § 220.44(5) and that definition is inserted here.

Add if supported by the evidence:

A person is presumed to know that he or she is within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility.⁸ That means if the People prove beyond a reasonable doubt that the defendant knowingly and unlawfully sold a controlled substance in a place where a notice was conspicuously posted of the presence or proximity of a child day care or educational facility, then you may, but are not required to, infer that the defendant knew he/she was on the grounds of the facility at the time of the sale.

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 sale took place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that the sale was taking place upon such grounds.

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 any one or more of those elements, you must find the defendant not guilty of this crime.

⁸The presumption is set forth in the last sentence of the definition of the crime in Penal Law § 220.34(8).