

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
IN THE THIRD DEGREE
(One-Eighth [1/8] Ounce or More
Containing Methamphetamine)
Penal Law § 220.39(7)
(Committed on or after June 10, 1995)
(Revised April 4, 2003)¹**

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

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Third Degree when that person knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing methamphetamine, or its salts, isomers or salts of isomers, and the preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth [1/8] ounce or more.

The following terms used in that definition have a special meaning: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 The revision was for the purpose of re-defining the term "sale" as it applied to an offer or agreement to sell.

² Where necessary, include the definition of "ounce" which means "an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids." Penal Law § 220.00(3).

³ See Penal Law § 220.00(1); *People v. Samuels*, 90 N.Y.2d 20 (2002).

A person KNOWINGLY sells a substance which contains methamphetamine, or its salts, isomers, or salts of isomers, when that person is aware that he or she is selling a substance which contains methamphetamine, or its salts, isomers or salts of isomers.⁴

A person UNLAWFULLY sells methamphetamine, or its salts, isomers or salts of isomers, when that person has no legal right to sell it.⁵ Under our law, with certain exceptions not applicable here, a person has no legal right to sell methamphetamine, or its salts, isomers or salts of isomers.

AGGREGATE WEIGHT refers to the weight of the substance which contains the methamphetamine, or its salts, isomers or salts of isomers, irrespective of the amount of the methamphetamine or its salts, isomers or salts of isomers actually in the substance.⁶

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 one or more preparations, compounds, mixtures or substances containing methamphetamine, or its salts, isomers or salts of isomers;
2. That the defendant did so knowingly and unlawfully; and

⁴ See Penal Law § 15.05(2); Penal Law § 15.20(4). 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 See *People v Mendoza*, 81 NY2d 963, 965 (1993).

3. That, in the aggregate, such substance weighed one-eighth [1/8] ounce or more.

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.