

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
THIRD DEGREE  
(B Felony)  
(Stimulant, Hallucinogen, Hallucinogenic  
Substance, or Lysergic Acid  
Diethylamide - Prior Conviction)  
PENAL LAW 220.39(2)  
(Committed on or after Sept. 1, 1979 )**

**(Revised April 4, 2003)<sup>1</sup>**

The \_\_\_\_\_ 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 a

*Select appropriate alternative:*

stimulant  
a hallucinogen  
a hallucinogenic substance  
lysergic acid diethylamide.<sup>2</sup>

Some of the terms used in this definition have their own

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

<sup>2</sup> An additional element of this crime is that the defendant "has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense." Prior to trial, the defendant must be arraigned upon a special information alleging the previous conviction in accordance with the procedure set forth in CPL § 200.60(3). If upon such arraignment, the defendant admits the previous conviction, the court must not make any reference to it in the definition of the crime or in listing its elements. But if the defendant denies the previous conviction or remains mute, the court must add the following to the definition of the crime: "and has previously been convicted of (*specify*)."  
See CPL 200.60(3).

special meaning in our law. I will now give you the meaning of the following terms: ["stimulant"], ["hallucinogen"], ["hallucinogenic substance"], "sell," "knowingly," and "unlawfully."

[The term STIMULANT (or HALLUCINOGEN) (or HALLUCINOGENIC SUBSTANCE) includes (specify).<sup>3</sup>]

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.]<sup>4</sup>

A person KNOWINGLY sells (specify) when that person is aware that he or she is selling a substance which contains (specify).<sup>5</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it.<sup>6</sup> 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

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<sup>3</sup> See Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

<sup>4</sup> See Penal Law § 220.00(1); *People v. Samuels*, 90 N.Y.2d 20 (2002).

<sup>5</sup> See Penal Law § 15.05(2). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

<sup>6</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).

defendant, *(defendant's name)*, sold a quantity of *(specify)*;  
and

2. That the defendant did so knowingly and unlawfully.<sup>7</sup>

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Sale of a Controlled Substance in the Third Degree 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 Criminal Sale of a Controlled Substance in the Third Degree as charged in the \_\_\_ count.

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<sup>7</sup> If the defendant has denied the previous conviction or has remained mute, add the following:

**“and 3. That the defendant has previously been convicted of *(specify)*.”** See CPL 200.60(3).