

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
SECOND DEGREE  
(A-II Felony)  
(Pure Weight Counts)**

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**PENAL LAW 220.41(3)  
(Five Grams or More of a Stimulant)  
(Committed on or after June 10, 1995)**

**PENAL LAW 220.41(4)  
(Five Milligrams or More  
of Lysergic Acid Diethylamide)  
(Committed on or after June 10, 1995)**

**PENAL LAW 220.41(5)  
(One Hundred Twenty-Five Milligrams  
or More of a Hallucinogen)  
(Committed on or after June 10, 1995)**

**PENAL LAW 220.41(6)  
(Five Grams or More  
of a Hallucinogenic Substance)  
(Committed on or after June 10, 1995)**

**PENAL LAW 220.41(7)  
(Three Hundred and Sixty Milligrams  
or More of Methadone)  
(Committed on or after June 10, 1995)**

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

The \_\_\_\_\_ count is Criminal Sale of a Controlled Substance  
in the Second Degree.

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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.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Second Degree when that person knowingly and unlawfully sells

*Select appropriate alternative:*

a stimulant and the stimulant weighs five grams.

lysergic acid diethylamide and the lysergic acid diethylamide weighs five milligrams or more.

a hallucinogen and the hallucinogen weighs one hundred twenty-five milligrams or more.

a hallucinogenic substance and the hallucinogenic substance weighs five grams or more.

methadone and the methadone weighs three hundred and sixty milligrams or more.

Some of the terms used in this definition have their own 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>2</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

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<sup>2</sup>See Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

with intent to sell when that person's conscious objective or purpose is to sell.]<sup>3</sup>

A person KNOWINGLY sells (specify) when that person is aware that he or she is selling (specify).<sup>4</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it.<sup>5</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 defendant, (defendant's name), sold (specify);
2. That the defendant did so knowingly and unlawfully; and
3. That the (specify) weighed (specify) or more.

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 Second 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 Second Degree as

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

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

<sup>5</sup>See Penal Law § 220.00(2) and Public Health Law § 3396(1).

charged in the \_\_\_ count.