

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
IN THE FIRST DEGREE
(Two Thousand Eight Hundred Eighty
[2,880] Milligrams of Methadone)
Penal Law § 220.43(2)
(Committed on or after June 10, 1995)
(Revised April 4, 2003)¹**

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

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the First Degree when that person knowingly and unlawfully sells methadone and the methadone weighs two thousand eight hundred eighty [2,880] milligrams or more.

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

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.]²

A person KNOWINGLY sells methadone when he or she is aware that he or she is selling methadone.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 See Penal Law § 220.00(1); *People v. Samuels*, 90 N.Y.2d 20 (2002).

³ See Penal Law § 15.05(2). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

A person UNLAWFULLY sells methadone when that person has no legal right to sell it.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to sell methadone.

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 methadone;
2. That the defendant did so knowingly and unlawfully; and
3. That the methadone weighed two thousand eight hundred eighty [2,880] milligrams 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.

⁴ See Penal Law § 220.00(2) and Public Health Law § 3396(1).