

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
IN OR NEAR SCHOOL GROUNDS  
(Narcotic Drug)  
Penal Law § 220.44 (2)  
(Committed on or after Sept. 1, 2006)<sup>1</sup>**

The (specify) count is Criminal Sale of a Controlled Substance In or Near school grounds.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance In or Near School Grounds when that person knowingly and unlawfully sells a narcotic drug <sup>2</sup> (and) when such sale takes place upon school grounds or on a school bus.

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

NARCOTIC DRUG includes (specify).

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>3</sup>

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<sup>1</sup> This charge was revised to add the words "or on a school bus" after "school grounds" as required by a statutory amendment, effective September 1, 2006. L. 2006, c.436 .

<sup>2</sup> Penal Law § 220.44(2) at this point states "a controlled substance [sold] in violation of any one of subdivisions one through eight of section 220.39." Penal Law § 220.39 subdivision one specifies a "narcotic drug." This charge is limited to that subdivision.

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

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).

SCHOOL GROUNDS means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school, [or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school]. An "area accessible to the public" means sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.<sup>6</sup>

SCHOOL BUS means every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or

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<sup>3</sup> See Penal Law § 15.05(2). In *People v. Gonzalez*, 240 A.D.2d 255 (2d Dept. 1997), leave to appeal denied 90 N.Y.2d 1011, the Court held that the People were not required to prove that the defendant knew that the sale took place upon school grounds. An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

<sup>4</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).

<sup>6</sup> Penal Law § 220.00(14).

school activities.<sup>7</sup>

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 such sale took place upon school grounds or on a school bus.

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.

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<sup>7</sup> See Penal Law § 220.00(17).