

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
TO A CHILD**

**Penal Law § 220.48**

**(Committed on or after Nov. 1, 2009)**

(Revised Dec. 2020)<sup>1</sup>

The (*specify*) count is Criminal Sale of a Controlled Substance to a Child.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance to a Child when, being over twenty-one years old, he or she knowingly and unlawfully sells a<sup>2</sup> (*specify contents of the subdivision of Penal Law § 220.34 or § 220.39 allegedly violated*) to a person less than seventeen years old.

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

*(Specify) controlled substance as specified in applicable subdivision of Penal Law § 220.34 or § 220.39)*

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

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<sup>1</sup> The 2020 revision was for the purpose of requiring the applicable controlled substance as specified in Penal Law § 220.344 or § 220.39 read to the jury.

<sup>2</sup> At this point, the statute states: “controlled substance in violation of section 220.34 or 220.39 of this article.” Thus, the court should, as indicated in the charge, substitute the applicable subdivision of Penal Law § 220.34 or § 220.39 that the defendant is charged with violating.

person acts 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 a substance which contains (specify)<sup>4</sup>

Knowledge of the age of the child is not an element of this crime, and it is not a defense to this charge that the defendant did not know the age of the child, or believed the age of the child to be seventeen years or more. <sup>5</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell that substance. Under our law, with certain exceptions not applicable here, a person has no legal right to sell (specify).<sup>6</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 four elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), sold (specify) to (specify);

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<sup>3</sup> See Penal Law § 220.00(1); *People v. Samuels*, 99 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. Note that for purposes of this crime, knowingly does not apply to the age of the buyer (See, Penal Law §15.20(3)).

<sup>5</sup> See Penal Law § 15.20(3).

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

2. That the defendant did so knowingly and unlawfully;
3. That the defendant was over 21 years old at that time; and
4. That (specify) was less than 17 years old at that time.

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.