

**CRIMINAL SALE OF MARIHUANA  
IN THE FIFTH DEGREE  
(Two grams or less, or one cigarette)  
Penal Law § 221.35  
(Committed on or after June 10, 1995)**

The (*specify*) count is Criminal Sale of Marihuana in the Fifth Degree.

Under our law, a person is guilty of Criminal Sale of Marihuana in the Fifth Degree when that person knowingly and unlawfully sells, without consideration,

*Select appropriate alternative:*

one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of two grams or less;

one cigarette containing marihuana.

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

**SELL WITHOUT CONSIDERATION** means to give or dispose of to another [or to offer or agree to do the same] without receiving anything in return, and without an understanding or promise that anything would be received in return.<sup>1</sup>

A person **KNOWINGLY** sells a substance containing marihuana when that person is aware that he or she is

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<sup>1</sup>Cf. Penal Law § 220.00(1); 22 N.Y.Jur.2d, Contracts, §61, et seq. (Lawyers Coop. 1996).

selling a substance containing marihuana.<sup>2</sup>

A person UNLAWFULLY sells a substance containing marihuana when that person has no legal right to sell it.<sup>3</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to sell marihuana.

[AGGREGATE WEIGHT refers to the weight of the substance which contains the marihuana, irrespective of the amount of the marihuana actually in the substance. <sup>4</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 [two] [three] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), sold, without consideration,

Select appropriate alternative:

one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of two grams or less;

one cigarette containing marihuana;

2. That the defendant did so knowingly and unlawfully;  
[and]

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<sup>2</sup>See Penal Law § 15.05(2).

<sup>3</sup>See Penal Law §§221.00 and 220.00(2), and Public Health Law § 3304 and § 3396(1).

<sup>4</sup> See *People v. Mendoza*, 81 N.Y.2d 963, 965 (1993).

[3. That, in the aggregate, the substance weighed two grams or less].

If you find the People have proven beyond a reasonable doubt (each / both) of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt (either one / any one) or more of those elements, you must find the defendant not guilty of this crime.