

**CRIMINAL SALE OF MARIHUANA  
IN THE THIRD DEGREE  
(More than 25 grams)  
Penal Law § 221.45  
(Committed on or after June 10, 1995)**

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

Under our law, a person is guilty of Criminal Sale of Marihuana in the Third Degree when that person knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams.

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

SELL means to sell, exchange, give or dispose of to another [or to offer or agree to do the same].<sup>1</sup>

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

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<sup>1</sup>See Penal Law § 220.00(1).

<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).

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 three elements:

1. That on or about (*date*), in the county of (*county*), the defendant, (*defendant's name*), sold one or more preparations, compounds, mixtures or substances containing marihuana;
2. That the defendant did so knowingly and unlawfully; and
3. That, in the aggregate, the substance weighed more than twenty- five grams.

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