

**CRIMINAL SALE OF A CONTROLLED
SUBSTANCE SECOND DEGREE
(A-II Felony)**

**PENAL LAW 220.41(1)
(One-Half Ounce or More
of a Narcotic Drug)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.41(2)
(One-Half Ounce or More
of Methamphetamine)
(Committed on or after Sept. 1, 1973)**

The _____ count is Criminal Sale of a Controlled Substance in the Second Degree.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Second Degree when that person knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing a narcotic drug [*or* methamphetamine, its salts, isomers or salts of isomers].

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: [“narcotic drug”, “sell,” “knowingly,” “unlawfully” and “aggregate weight.”]¹

[The term NARCOTIC DRUG includes *(specify)*.²]

SELL means to sell, exchange, give or dispose of to another [*or* to offer or agree to do the same].³

A person KNOWINGLY sells one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing *(specify)* when that person is aware that he or she is selling that substance in that quantity. Thus, the person must be aware both that the substance he or she is selling contains *(specify)* and that, in the aggregate, the substance weighs one-half ounce or more.⁴

Where necessary, include the definition of “ounce” which means “an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids” (Penal Law § 220.00[3]).

See, Penal Law § 220.00(7).

See, Penal Law § 220.00(1).

See, Penal Law § 15.05(2) and *People v Ryan*, 82 NY2d 497 (1993).

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it.⁵ Under our law, with certain exceptions not applicable here, a person has no legal right to sell (specify).

AGGREGATE WEIGHT refers to the weight of the substance which contains the (specify) , irrespective of the amount of the (specify) actually in the substance.⁶

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, both of the following two 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 of an aggregate weight of one-half ounce or more containing (specify); and
2. That the defendant did so knowingly and unlawfully.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Sale of a Controlled Substance in the Second Degree as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Sale of a Controlled Substance in the Second Degree as charged in the ___ count.

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

See, People v Mendoza, 81 NY2d 963, 965 (1993)