

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
IN THE FOURTH DEGREE**

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**Penal Law § 220.34(1)  
(A Narcotic Preparation)  
(Committed on or after Sept. 1, 1979)**

**Penal Law § 220.34(5)  
(Methadone)  
(Committed on or after Sept. 1, 1979)**

**(Revised April 4, 2003)<sup>1</sup>**

The (specify) count is Criminal Sale of a Controlled Substance in the Fourth Degree.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Fourth Degree when that person knowingly and unlawfully sells

*Select appropriate alternative:*

a narcotic preparation

methadone.

The following terms used in that definition have a special

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<sup>1</sup> The revision was for the purpose of re-defining the term “sale” as it applied to an offer or agreement to sell.

meaning:

[The term NARCOTIC PREPARATION includes (specify).<sup>2</sup>]

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>

A person KNOWINGLY sells (specify) when that person is aware that he or she is selling a substance which contains (specify).<sup>4</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell that substance.<sup>5</sup> <sup>6</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to sell (specify).

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 a substance

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<sup>2</sup> See Penal Law § 220.00(8).

<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.

<sup>5</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).

containing (specify) ; and

2. That the defendant did so knowingly and unlawfully.

If you find the People have proven beyond a reasonable doubt 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 or both of those elements, you must find the defendant not guilty of this crime.