

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
IN THE FOURTH DEGREE
Penal Law § 220.34(6)
(Phencyclidine - Prior Conviction)
(Committed on or after Nov. 1, 1985)
(Revised April 4, 2003)¹**

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 any amount of phencyclidine.²

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

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.]³

¹ The revision was for the purpose of re-defining the term "sale" as it applied to an offer or agreement to sell.

² An additional element of this crime is that the defendant "has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense." Prior to trial, the defendant must be arraigned upon a special information alleging the previous conviction. If, upon such arraignment, the defendant admits the previous conviction, the court may not make any reference to it in the definition of the crime. But if the defendant denies the previous conviction or remains mute, the court must add the following to the definition of the crime: "and has previously been convicted of (specify)." See CPL 200.60(3).

³ See Penal Law § 220.00(1); *People v. Samuels*, 90 N.Y.2d 20 (2002).

A person KNOWINGLY sells phencyclidine when that person is aware that he or she is selling phencyclidine.⁴

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

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 quantity of phencyclidine; and
2. That the defendant did so knowingly and unlawfully.⁶

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.

⁴See Penal Law § 15.05(2).. An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

⁵ See Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁶ If the defendant has denied the previous conviction or has remained mute, add the following:

“and 3. That the defendant has previously been convicted of (specify).” See CPL 200.60(3).