

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
IN THE FOURTH DEGREE  
(Twenty Eight [28] Grams or More Containing  
Gamma Hydroxybutyric Acid)  
Penal Law § 220.34(9)  
(Committed on or after Nov. 1, 2003)**

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 one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty eight [28] grams or more.

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.]<sup>1</sup>

A person KNOWINGLY sells a preparation, compound, mixture or substance containing gamma hydroxybutyric acid when that person is aware that he or she is selling a preparation, compound, mixture or substance containing gamma

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<sup>1</sup> See Penal Law § 220.00(1); *People v Samuels*, 90 NY2d 20 (2002).

hydroxybutyric acid.<sup>2</sup>

A person UNLAWFULLY sells a preparation, compound, mixture or substance containing gamma hydroxybutyric acid 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 a preparation, compound, mixture or substance containing gamma hydroxybutyric acid.

AGGREGATE WEIGHT refers to the weight of the substance containing gamma hydroxybutyric acid, irrespective of the amount of gamma hydroxybutyric acid 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 gamma hydroxybutyric acid;
2. That the defendant did so knowingly and unlawfully; and
3. That, in the aggregate, the substance weighed twenty eight [28] grams or more.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty

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

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

<sup>4</sup> See *People v Mendoza*, 81 NY2d 963, 965 (1993).

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.