

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
FOURTH DEGREE  
(C Felony)  
(Pure Weight Counts)**

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**PENAL LAW 220.34(2)  
(Ten [10] Ounces or More  
of a Dangerous Depressant;  
or Two [2] Pounds or More  
of a Depressant)  
(Committed on or after June 10, 1995)**

**PENAL LAW 220.34(4)  
(Fifty [50] Milligrams  
or More of Phencyclidine)  
(Committed on or after June 10, 1995)**

**PENAL LAW 220.34(6-a)  
(Four thousand [4000] Milligrams  
or More of Ketamine)  
(Committed on or after January 22, 1998)**

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

The \_\_\_ 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 a

*Select appropriate alternative:*

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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 and for the purpose of include the drug Ketamine.

dangerous depressant and the dangerous depressant weighs ten [10] ounces or more.

a depressant and the depressant weighs two (2) pounds or more.

phencyclidine and the phencyclidine weighs fifty (50) milligrams or more.

ketamine and said ketamine weighs four thousand [4000] milligrams or more.

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: ["dangerous depressant,"] ["depressant,"] "sell," "knowingly," and "unlawfully."

[The term DANGEROUS DEPRESSANT (or DEPRESSANT) 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

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<sup>2</sup> See Penal Law §§ 220.00(12) (dangerous depressant); 220.00(13) (depressant).

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

aware that he or she is selling (specify).<sup>4</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it.<sup>5</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, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), sold (specify);
2. That the defendant did so knowingly and unlawfully; and
3. That the (specify) weighed (specify) or more.

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

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

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<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).