

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
FOURTH DEGREE
(C Felony)
(Sale of a Controlled Substance Upon School Grounds or
School Bus)
PENAL LAW 220.34(7)
(Committed on or after Sept. 1, 2006)¹**

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 controlled substance, and when such sale takes place upon school grounds or on a school bus.

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: “controlled substance,” “sell,” “knowingly,” “unlawfully,” “school grounds” and “school bus.”

The term CONTROLLED SUBSTANCE includes (specify).²

SELL means to sell, exchange, give or dispose of to another.

[Sell also includes an offer or agreement to sell even if

¹ This charge has been revised to accord with the following statutory amendments. Prior to November 1, 1994, the statute read: “A person is guilty of Criminal Sale of a Controlled Substance in the Fourth Degree when that person knowingly and unlawfully sells a controlled substance to a person less than nineteen years of age, and when such sale takes place upon school grounds.” Effective November 1, 1994 (L. 1994, c. 292), the words “to a person less than nineteen years of age” were repealed; and effective September 1, 2006 (L. 2006, c. 436) the words “or on a school bus” were added.

² See, Penal Law § 220.00(5).

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

A person KNOWINGLY sells (specify) when that person is aware that he or she is selling (specify).⁴ For this charge, the People need not prove that the defendant was aware that the person to whom the (specify) was sold was less than nineteen years of age.⁵

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

SCHOOL GROUNDS means in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school [or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school]. An "area accessible

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

³ See, Penal Law § 15.05(2). In *People v. Gonzalez*, 240 A.D.2d 255 (2d Dept. 1997), the Court held that the People were not required to prove that the defendant knew that the sale took place upon school grounds. An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

⁵ See, Penal Law § 15.20(3).

⁶ See, Penal Law § 220.00(2) and Public Health Law § 3396(1).

to the public" means sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.⁷

SCHOOL BUS means every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.⁸

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;
3. That the sale took place upon school grounds or on a school bus.

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.

⁷ See, Penal Law § 220.00(14).

⁸ See, Penal Law § 220.00(17).