

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
FOURTH DEGREE
(C Felony)
(Twenty Eight [28] Grams or More Containing
Gamma Hydroxybutyric Acid)
PENAL LAW 220.34(9)
(Committed on or after Nov. 1, 2003)**

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 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.

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: "sell," "knowingly," "unlawfully," and "aggregate weight."

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.]¹

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 hydroxybutyric

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

acid.²

A person UNLAWFULLY sells a preparation, compound, mixture or substance containing gamma hydroxybutyric acid when that person has no legal right to sell it.³ 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.⁴

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.

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

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

³ See Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁴ See *People v Mendoza*, 81 NY2d 963, 965 (1993).

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.