

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
IN THE SECOND DEGREE  
(Pure Weight Counts)**

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**Penal Law § 220.41(3)  
(Five Grams or More of a Stimulant)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.41(4)  
(Five Milligrams or More  
of Lysergic Acid Diethylamide)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.41(5)  
(One Hundred Twenty-Five Milligrams  
or More of a Hallucinogen)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.41(6)  
(Five Grams or More  
of a Hallucinogenic Substance)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.41(7)  
(Three Hundred and Sixty Milligrams  
or More of Methadone)  
(Committed on or after June 10, 1995)**

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

The (*specify*) count is Criminal Sale of a Controlled Substance in the Second Degree.

Under our law, a person is guilty of Criminal Sale of a

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<sup>1</sup> The revision was for the purpose of expanding the definition of the term "sell" as it applies to an offer or agreement to sell.

Controlled Substance in the Second Degree when that person knowingly and unlawfully sells

*Select appropriate alternative:*

a stimulant and the stimulant weighs five grams.

lysergic acid diethylamide and the lysergic acid diethylamide weighs five milligrams or more.

a hallucinogen and the hallucinogen weighs one hundred twenty-five milligrams or more.

a hallucinogenic substance and the hallucinogenic substance weighs five grams or more.

methadone and the methadone weighs three hundred and sixty milligrams or more.

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

[The term STIMULANT (or HALLUCINOGEN) (or HALLUCINOGENIC SUBSTANCE) 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

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<sup>2</sup>See Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

objective or purpose is to sell.]<sup>3</sup>

A person KNOWINGLY sells (specify) when that person is 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, both of the following two 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.

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

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<sup>3</sup> See Penal Law § 220.00(1); *People v. Samuels*, 99 N.Y.2d 20 (2002).

<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).