

OPERATING AS A MAJOR TRAFFICKER
(A-I Felony)
PENAL LAW 220.77(1)
(Director)
(Committed on or after Nov. 1, 2009)

The _____ count is Operating as a Major Trafficker.

A person is guilty of Operating as a Major Trafficker when he or she acts as a director of a controlled substance organization during any period of twelve months or less, during which period such controlled substance organization sells one or more controlled substances, and the proceeds collected or due from such sale or sales have a total aggregate value of seventy-five thousand dollars 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: “controlled substance,” “controlled substance organization,” “director,” and “sell.”

A CONTROLLED SUBSTANCE includes (*specify*).¹

CONTROLLED SUBSTANCE ORGANIZATION means four or more persons sharing a common purpose to engage in conduct that constitutes or advances the commission of (*specify*).²

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.]³

[A person KNOWINGLY sells (*specify*) when that person is aware that he or she is selling a substance which contains (*specify*).

¹ See Penal Law § 220.00(5).

² See Penal Law § 220.00(18). The statute reads “a felony under this article,” and the judge should insert here the appropriate crime(s), for example, “a knowing and unlawful sale of a controlled substance.”

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

A person UNLAWFULLY sells (*specify*) when that person has no legal right to sell that substance. Under our law, with certain exceptions not applicable here, a person has no legal right to sell (*specify*).]⁴

DIRECTOR means a person who is the principal administrator, organizer, or leader of a controlled substance organization or one of several principal administrators, organizers, or leaders of a controlled substance organization.⁵

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 from (*specify time period*), defendant, (*defendant's name*), in the county of (*county*),⁶ acted as a director of a controlled substance organization during any period of twelve months or less, during which period such controlled substance organization sold one or more controlled substances; and
2. That the proceeds collected or due from such sale or sales had a total aggregate value of seventy-five thousand dollars or more.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Operating as a Major Trafficker as charged in the ____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Operating as a Major Trafficker as charged in the _____ count.

⁴ Where "knowingly and unlawfully sells" is defined in another count or when sale is not the criminal purpose alleged for the controlled substance organization, it should be omitted here.

⁵ See Penal Law § 220.00(19).

⁶ With respect to the county wherein the crime is alleged to have been committed, if venue or jurisdiction is at issue, the trial judge is advised to charge the applicable Venue charge contained in the General Charges section.