

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

**PENAL LAW 220.34(2)
(Ten Ounces or More
of a Dangerous Depressant;
or Two Pounds or More
of a Depressant)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.34(4)
(Fifty Milligrams
or More of Phencyclidine)
(Committed on or after Nov. 1, 1985)**

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 ten ounces or more of a dangerous depressant [*or* two pounds or more of a depressant] [*or* fifty milligrams or more of phencyclidine].

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).¹]

SELL means to sell, exchange, give or dispose of to another [*or* to offer or agree to do the same].²

A person KNOWINGLY sells (specify) or more of (specify) when that person is aware that he or she is selling (specify) in that quantity. Thus, the person must be aware both that the substance he or she is selling contains (specify) and that the (specify) contained in the substance weighs (specify) or more.³

A person UNLAWFULLY sells (specify) when that person has no legal right to sell that

See, Penal Law §§ 220.00(12) (dangerous depressant); 220.00(13) (depressant).

See, Penal Law § 220.00(1).

See, Penal Law § 15.05(2) and *People v Ryan*, 82 NY2d 497 (1993).

substance.⁴ 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) or more of (specify); and
2. That the defendant did so knowingly and unlawfully.

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 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 either one or both 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.

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