

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
THIRD DEGREE**

**(B Felony)**

**PENAL LAW 220.39(3)**

**(One Gram or More of a Stimulant)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.39(4)**

**(One Milligram or More  
of Lysergic Acid Diethylamide)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.39(5)**

**(Twenty-Five Milligrams or More  
of a Hallucinogen)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.39(6)**

**(One Gram or More  
of a Hallucinogenic Substance)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.39(8)**

**(Two Hundred Fifty Milligrams or More  
of Phencyclidine)  
(Committed on or after Nov. 1, 1985)**

The \_\_\_\_\_ count is Criminal Sale of a Controlled Substance in the Third Degree.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Third Degree when that person knowingly and unlawfully sells one gram or more of a stimulant [*or* one milligram or more of lysergic acid diethylamide] [*or* twenty-five milligrams or more of a hallucinogen] [*or* one gram or more of a hallucinogenic substance] [*or* two hundred 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: ["stimulant"], ["hallucinogen"], ["hallucinogenic substance"], "sell," "knowingly," and "unlawfully."

[The term STIMULANT (*or* HALLUCINOGEN) (*or* HALLUCINOGENIC SUBSTANCE) includes *(specify)*.<sup>1</sup>]

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*See*, Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

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

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.<sup>3</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it.<sup>4</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) 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 Third 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 Third Degree as charged in the \_\_\_ count.

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*See*, Penal Law § 220.00(1).

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

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