

**CRIMINAL SALE OF A
CONTROLLED SUBSTANCE
FOURTH DEGREE
(C Felony)
PENAL LAW 220.34(6)
(Phencyclidine - Prior Conviction)
(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 phencyclidine.¹

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,” and “unlawfully.”

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 phencyclidine when that person is aware that he or she is selling phencyclidine.³

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

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 a quantity of phencyclidine; and

An additional element of this crime is that the defendant “has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense.” Prior to trial, the defendant must be arraigned upon a special information alleging the previous conviction. If, upon such arraignment, the defendant admits the previous conviction, the court **may not make any reference to it in the definition of the crime**. But if the defendant denies the previous conviction or remains mute, the court must add the following to the definition of the crime: “**and has previously been convicted of (specify).**” (*See*, CPL 200.60[3].)

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).

2. That the defendant did so knowingly and unlawfully.⁵

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.

If the defendant has denied the previous conviction or has remained mute, add the following: **“and 3. That the defendant has previously been convicted of (specify).”** (See, CPL 200.60[3].)