

**CRIMINAL SALE OF A
CONTROLLED SUBSTANCE
THIRD DEGREE
(B Felony)
(One-Eighth Ounce or More
of Methamphetamine)
PENAL LAW 220.39(7)
(Committed on or after Sept. 1, 1979)**

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 or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine [*or* methamphetamine salts][*or* methamphetamine isomers][*or* salts of methamphetamine isomers].

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,” “unlawfully,” and “aggregate weight.”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 one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine [*or* methamphetamine salts][*or* methamphetamine isomers][*or* salts of methamphetamine isomers] when that person is aware that he or she is selling that substance in that quantity. Thus, the person must be aware both that the substance he or she is selling contains (*specify*) and that, in the aggregate, the substance weighs one-eighth ounce or more.³

A person UNLAWFULLY sells methamphetamine [*or* methamphetamine salts] [*or* methamphetamine isomers] [*or* salts of methamphetamine isomers] when that person has no legal right to sell it.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to sell methamphetamine [*or* methamphetamine salts] [*or* methamphetamine isomers] [*or* salts of methamphetamine isomers].

AGGREGATE WEIGHT refers to the weight of the substance which contains the methamphetamine [*or* methamphetamine salts] [*or* methamphetamine isomers] [*or* salts of methamphetamine isomers], irrespective of the amount of the methamphetamine [*or* methamphetamine

Where necessary, include the definition of “ounce” which means “an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids” (Penal Law § 220.00[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).

salts] [or methampheta-mine isomers] [or salts of methamphetamine isomers] actually in the substance.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 on or about *(date)*, in the county of *(county)*, the defendant, *(defendant's name)*, sold one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine [or methamphetamine salts][or methamphetamine isomers][or salts of methamphetamine isomers]; 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.

See, People v Mendoza, 81 NY2d 963, 965 (1993)