

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE
IN OR NEAR SCHOOL GROUNDS
Penal Law § 220.44
(Committed on or after September 1, 2006)**

Statutory definition of the crime

A person is guilty of criminal sale of a controlled substance in or near school grounds when he or she knowingly and unlawfully sells:

1. a controlled substance in violation of any one of subdivisions one through six-a of section 220.34 of this article, when such sale takes place upon school grounds or on a school bus; or

2. a controlled substance in violation of any one of subdivisions one through eight of section 220.39 of this article, when such sale takes place upon school grounds or on a school bus; or

3. a controlled substance in violation of any one of subdivisions one through six of section 220.34 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds; or

4. a controlled substance in violation of any one of subdivisions one through eight of section 220.39 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds.

Jury Instruction

For each of the four subdivisions of Penal Law § 220.44, use the CJI2d charge for the sale of the controlled substance in violation of the applicable subdivision specified within each of the four subdivisions and add to the definition of the crime and the elements to be proved beyond a reasonable doubt the location of the sale specified in the applicable subdivision of Penal Law § 220.44. See e.g. Instruction for Penal Law § 220.44(2) for a narcotic drug.

For subdivisions (3) and (4) of Penal Law § 220.44, add in the definition section of the applicable charge, the following definition of "the grounds of a child day care or educational facility," as set forth in Penal Law § 220.44(5), namely,

GROUND OF A CHILD DAY CARE OR EDUCATIONAL FACILITY means (a) in or on or within any building, structure, athletic playing field, a playground or land contained within the real property boundary line of a public or private child day care center, or nursery,

pre-kindergarten or kindergarten, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such facility or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such facility. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.¹

Last, also for subdivisions (3) and (4) of Penal Law § 220.44, before the section of the charge that lists the elements to be proven beyond a reasonable doubt insert, pursuant to Penal Law § 220.44(6):

Under our law, a person has knowledge that they are within the "grounds of a child day care or educational facility" when notice is conspicuously posted of the presence or proximity of such facility. What this means is that if the People have proven beyond a reasonable doubt that a notice was conspicuously posted of the presence or proximity of the facility, you may, but are not required to, infer that the defendant knew that he/she was within the grounds of the facility. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.

¹ At this point, the statute states: "as such term is defined in paragraph (c) of subdivision one of section three hundred ninety of the social services law." If in issue add that definition as well.