

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

(A-II Felony)

**PENAL LAW 220.41(3)
(Five Grams or More of a Stimulant)
(Committed on or after Sept. 1, 1973)**

**PENAL LAW 220.41(4)
(Five Milligrams or More
of Lysergic Acid Diethylamide)
(Committed on or after Sept. 1, 1973)**

**PENAL LAW 220.41(5)
(One Hundred Twenty-Five Milligrams
or More of a Hallucinogen)
(Committed on or after Sept. 1, 1973)**

**PENAL LAW 220.41(6)
(Five Grams or More
of a Hallucinogenic Substance)
(Committed on or after Sept. 1, 1973)**

**PENAL LAW 220.41(7)
(Three Hundred and Sixty Milligrams
or More of Methadone)
(Committed on or after Sept. 1, 1973)**

The _____ count is Criminal Sale of a Controlled Substance in the Second Degree.

Criminal Sale of a Controlled Substance in the Second Degree when that person knowingly and unlawfully sells five grams or more of a stimulant [*or* five milligrams or more of lysergic acid diethylamide] [*or* one hundred twenty-five milligrams or more of a hallucinogen] [*or* five grams or more of a hallucinogenic substance] [*or* three hundred and sixty milligrams or more of methadone].

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”], [“halluci-nogen”], [“hallucinogenic substance”], “sell,” “knowingly,” and “unlawfully.”

[The term STIMULANT (*or* HALLUCINOGEN) (*or* HALLUCINOGE-NIC SUBSTANCE) includes *(specify)*.¹]

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*].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 it.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 Second 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 Second Degree as charged in the ___ count.

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).