

CRIMINAL SALE OF CANNABIS
[or CONCENTRATED CANNABIS]
Penal Law §§ 222.50(1); 222.55(1); 222.60.
AGGRAVATED CRIMINAL SALE OF CANNABIS
[or CONCENTRATED CANNABIS]
Penal Law § 222.65
(Committed on or after March 31, 2021)

The (specify) count is [Aggravated] Criminal Sale of Cannabis in the (specify) degree.

Under our law, a person is guilty of [Aggravated] Criminal Sale of Cannabis in the (specify) Degree when that person knowingly and unlawfully sells more than (specify weight and substance: Cannabis / Concentrated Cannabis).

The following terms used in that definition have a special meaning:

[CANNABIS means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.¹]

[CONCENTRATED CANNABIS means:

(a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

(b) a material, preparation, mixture, compound or other substance which contains more than three percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran

¹ Penal Law § 222.00(1). Include definition or relevant parts as may be in issue.

numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system.^{2]}

SELL means to sell, exchange, or dispose of for compensation. Add if applicable: "Sell" shall not include the transfer of up to 3 ounces of cannabis [(or) up to 24 grams of concentrated cannabis] between persons twenty-one years of age or older without compensation.³

A person KNOWINGLY sells (specify weight and substance) when that person is aware that he or she is selling (specify weight and substance).⁴

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it. Under our law, with exceptions that are not applicable here, a person has no legal right to sell (Cannabis / Concentrated Cannabis).⁵

² Penal Law § 222.00(2). Include definition or relevant parts as may be in issue.

³ Penal Law § 222.00(3).

⁴ Penal Law § 15.05(2), defines "knowingly." If necessary, an expanded definition of the meaning of "knowingly" is available in the charges on General Applicability, Culpable Mental States, Knowingly.

The language of the cannabis and concentrated cannabis sale statutes parallels the language of drug sale statutes that the Court of Appeals held, in *People v. Ryan* (82 N.Y.2d 497 [1993]), required proof of the defendant's knowledge of the weight as well as the substance. Cf. Penal Law § 15.20(4), enacted after the *Ryan* decision, which states that the defendant need not know the weight of a controlled substance or marihuana when the weight specified in the statute defining a crime is an "aggregate weight"; the weight of cannabis and concentrated cannabis is specified as a "pure weight."

⁵ There is no statutory definition of "unlawfully." There are statutes in Penal Law article 222 and in the Cannabis Law bearing on what is unlawful, as well as statutes bearing on what is lawful (and inferentially what would be unlawful).

If there is a claim that a statute makes the sale in a particular case lawful, the court must adjust the definition of "unlawfully" accordingly.

For example, Penal Law § 222.20 provides that: "In any prosecution for an offense involving cannabis under [Penal Law article 222] or an authorized local law, it is a defense that the defendant was engaged in such activity in compliance with the Cannabis Law." That requires the defendant to place in issue the lawfulness of the sale as may be provided for in the Cannabis Law.

With respect to claims that the sale is lawful under a Penal Law provision, decisional law appears to require the defendant to place it in issue as well. See *People v. Kohut*, 30 N.Y.2d 183 (1972) (when an exception to a criminal statute is in a section other than the section defining the offense, the exception constitutes a defense for the defendant to place in issue); *People v. Santana*, 7 N.Y.3d 234, 237 (2006) (the People were not required to negate the many alternatives encompassed in the statute's exception clause that here operated as a proviso); *People v. Davis*, 13 N.Y.3d 17, 31 (2009) (the "main goal of the interpretative rules

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, each of the following two ~~three~~ elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), sold (specify substance: (Cannabis / Concentrated Cannabis) & weight);
2. That the defendant did so knowingly and unlawfully.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty.

governing exceptions and provisos is to discover the intention of the enacting body," and that intent may be determined by "common sense and reasonable pleading," including whether the information contained in a statute's exception "is uniquely within the defendant's knowledge," and whether requiring the People to plead and negate the existence of that information "would require them to go to 'intolerable lengths'").