

**Criminal Possession of Marihuana
in the Fifth Degree
(B Misdemeanor)
(Marihuana in a Public Place)
PENAL LAW 221.10(1)
(Committed on or after July 29, 1977)**

The _____ count is Criminal Possession of Marihuana in the Fifth Degree.

Under our law, a person is guilty of Criminal Possession of Marihuana in the Fifth Degree when that person knowingly and unlawfully possesses marihuana in a public place, and such marihuana is burning or open to public view.

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: "possess," "knowingly," "unlawfully," and "public place."

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹

A person KNOWINGLY possesses marihuana in a public place when that person is aware that he or she is in possession of marihuana in a public place.²

A person UNLAWFULLY possesses marihuana when that

¹See Penal Law § 10.00(8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction from the "Additional Charges" section at the end of the charges for Penal Law article 220.

²See Penal Law § 15.05(2).

person has no legal right to possess it.³ Under our law, with certain exceptions not applicable here, a person has no legal right to possess marihuana.

PUBLIC PLACE means a place to which the public or a substantial group of persons has access.⁴

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 three elements:

1. That on or about (*date*), in the county of (*county*), the defendant, (*defendant's name*), possessed marihuana in a public place;
2. That the defendant did so knowingly and unlawfully; and
3. That the marihuana was burning or open to public view.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of Marihuana in the Fifth Degree as charged in the _____ count.

On the other hand, if you find that the People have not

³See Penal Law §§221.00 and 220.00(2), and Public Health Law § 3304 and § 3396(1).

⁴See Penal Law §§ 221.10(1) and 240.00(1). The full definition of "public place," as given in Penal Law §240.00(1), further states "and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence." The Court may include in the definition of "public place" all or any portion of the foregoing as may be appropriate to the case on trial.

proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of Marihuana in the Fifth Degree as charged in the _____count.