

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
FIFTH DEGREE
(D Felony)**

**PENAL LAW 220.06(3)
(Fifty Milligrams or More
of Phencyclidine)
(Committed on or after Nov. 1, 1985)**

**PENAL LAW 220.06(5)
(Five Hundred Milligrams or More
of Cocaine)
(Committed on or after Nov. 1, 1988)**

The _____ count is Criminal Possession of a Controlled Substance in the Fifth Degree.

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Fifth Degree when that person knowingly and unlawfully possesses five hundred milligrams or more of cocaine [or fifty milligrams or more of phencyclidine].

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,” and “unlawfully.”

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

A person KNOWINGLY possesses (specify) or more of (specify) when that person is aware that he or she is in possession of (specify) in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains (specify) and that the (specify) contained in the substance weighs (specify) or more.²

A person UNLAWFULLY possesses (specify) when that person has no legal right to possess that substance.³ Under our law, with certain exceptions not applicable here, a person has no legal right to possess (specify).

See, 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 as found in the “Additional Charges” section at the end of this chapter.

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).

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), possessed (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 Possession of a Controlled Substance in the Fifth 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 Possession of a Controlled Substance in the Fifth Degree as charged in the ___ count.