

CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
FIRST DEGREE
(A-I Felony)
(Five Thousand Seven Hundred and Sixty
Milligrams of Methadone)
PENAL LAW 220.21(2)
(Committed on or after Sept. 1, 1973)

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

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the First Degree when that person knowingly and unlawfully possesses five thousand seven 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: “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 five thousand seven hundred and sixty milligrams or more of methadone when that person is aware that he or she is in possession of methadone in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains methadone and that the methadone contained in the substance weighs five thousand seven hundred and sixty milligrams or more²

A person UNLAWFULLY possesses methadone when that 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 methadone.

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 five thousand seven hundred and sixty milligrams or more of methadone; and

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).

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 First 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 First Degree as charged in the ___ count.