

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
IN THE FIFTH DEGREE
(Aggregate Weight Counts)**

**Penal Law § 220.06(2)
(One-Half [1/2] Ounce or More
Containing a Narcotic Preparation)
(Committed on or after June 10, 1995)**

**Penal Law § 220.06(4)
(One-Quarter [1/4] Ounce or More
Containing Concentrated Cannabis)
(Committed on or after June 10, 1995)**

**Penal Law § 220.06(8)
(28 grams or More Containing
Gamma Hydroxybutyric Acid)
(Committed on or after November 1, 2003)**

The (*specify*) 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 one or more preparations, compounds, mixtures or substances containing

Select the appropriate alternative:

a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half [1/2] ounce or more.

concentrated cannabis¹ and said preparations, compounds,

¹ The statute here refers to concentrated cannabis “as defined in paragraph (a) of subdivision four of section 3302 of the Public Health Law.”

mixtures or substances are of an aggregate weight of one fourth [1/4] ounce or more.

gamma hydroxybutyric acid and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more.²

The following terms used in that definition have a special meaning:³

[The term NARCOTIC PREPARATION includes (specify).⁴]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁵

A person KNOWINGLY possesses a substance containing (specify) when that person is aware that he or she is in possession of a substance containing (specify).⁶

A person UNLAWFULLY possesses (specify) when that

² If in issue, the applicable definition of “gamma hydroxybutyric acid” is in Public Health Law §3306(l)(e)(4).

³ Where necessary, include the definition of “ounce” which means “an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids” (Penal Law § 220.00[3]).

⁴ See Penal Law § 220.00(8).

⁵ 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 from the "Additional Charges" section at the end of this article.

⁶ See Penal Law § 15.05(2); Penal Law § 15.20(4). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

person has no legal right to possess it.⁷ Under our law, with certain exceptions not applicable here, a person has no legal right to possess (specify).

AGGREGATE WEIGHT refers to the weight of the substance which contains the (specify), irrespective of the amount of the (specify) actually in the substance.⁸

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 one or more preparations, compounds, mixtures or substances containing (specify);
2. That the defendant did so knowingly and unlawfully; and
3. That, in the aggregate, such substance weighed (specify) or more.

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

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 of this crime.

⁷See Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁸See *People v Mendoza*, 81 NY2d 963, 965 (1993).