

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE  
IN THE FIFTH DEGREE  
(Ketamine and a  
Prior Conviction)  
Penal Law § 220.06(7)  
(Committed on or after January 22, 1998)**

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 ketamine.<sup>1</sup>

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

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>2</sup>

A person KNOWINGLY possesses ketamine when that person is aware that he or she is in possession of ketamine.<sup>3</sup>

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<sup>1</sup> An additional element of this crime is that the defendant "has previously been convicted of possession or the attempt to commit possession of ketamine in any amount." Prior to trial, the defendant must be arraigned upon a special information alleging the previous conviction in accordance with the procedure set forth in CPL § 200.60(3). If upon such arraignment, the defendant admits the previous conviction, the court must not make any reference to it in the definition of the crime or in listing its elements. But if the defendant denies the previous conviction or remains mute, the court must add the following to the definition of the crime: "and has previously been convicted of (*specify*)."

<sup>2</sup> 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.

<sup>3</sup> See Penal Law § 15.05(2). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

A person UNLAWFULLY possesses ketamine when that person has no legal right to possess it.<sup>4</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to possess ketamine.

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 ketamine; and
2. That the defendant did so knowingly and unlawfully.<sup>5</sup>

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

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

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<sup>4</sup>See Penal Law § 220.00(2) and Public Health Law § 3396(1).

<sup>5</sup> If the defendant has denied the previous conviction or has remained mute, add the following:

**"and 3. That the defendant has previously been convicted of possession [or the attempt to commit possession] of ketamine in any amount." See CPL 200.60(3).**