

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

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**Penal Law § 220.09(1)  
(One-Eighth [1/8] Ounce or More  
Containing a Narcotic Drug)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(2)  
(One-Half [1/2] Ounce or More  
Containing Methamphetamine)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(3)  
(Two [2] Ounces or More  
Containing a Narcotic Preparation  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(10)  
(One [1] Ounce or More  
Containing Concentrated Cannabis)  
(Committed on or after November 1, 1998)**

**Penal Law § 220.09(15)  
(Two Hundred [200] Grams or More  
Containing Gamma Hydroxybutyric Acid)  
(Committed on or after November 1, 2003)**

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The (*specify*) count is Criminal Possession of a Controlled Substance in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Fourth Degree when that person knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing:

*Select the appropriate alternative:*

a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth [1/8] ounce or more.

methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of one-half [1/2] ounce or more.

a narcotic preparation and said preparations, compounds, mixtures, or substances are of an aggregate weight of two [2] ounces or more.

concentrated cannabis and the preparations, compounds, mixtures or substances are of an aggregate weight of one [1] ounce or more.

gamma hydroxybutyric acid and said preparations, compounds, mixtures or substances are of an aggregate weight of two hundred [200] grams or more.

The following terms used in that definition have a special meaning:<sup>1</sup>

[The term NARCOTIC DRUG (or NARCOTIC PREPARATION) includes (specify).<sup>2</sup>]

POSSESS means to have physical possession or otherwise

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<sup>1</sup> 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]).

<sup>3</sup> See Penal Law § 220.00(7)(narcotic drug); Penal Law § 220.00(8)(narcotic preparation).

to exercise dominion or control over tangible property.<sup>3</sup>

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).<sup>4</sup>

A person UNLAWFULLY possesses (specify) when that person has no legal right to possess it.<sup>5</sup> 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.<sup>6</sup>

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

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<sup>4</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>5</sup> 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.

<sup>6</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).

<sup>7</sup> See *People v Mendoza*, 81 NY2d 963, 965 (1993).

3. That, in the aggregate, the 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.