

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
IN THE FOURTH DEGREE
(Intent to Sell Phencyclidine; Prior Conviction)
Penal Law § 220.09(13)
(Committed on or after June 10, 1995)**

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 phencyclidine, and said phencyclidine weighs fifty [50] milligrams or more, with the intent to sell it.¹

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.²

A person KNOWINGLY possesses phencyclidine when that person is aware that he or she is in possession of phencyclidine.³

¹An additional element of this crime is that the defendant "has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense." 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*)."

²See 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.

³See, 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 phencyclidine when that person has no legal right to possess it.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to possess phencyclidine.

SELL means to sell, exchange, give or dispose of to another.⁵

INTENT means conscious objective or purpose. Thus, a person possesses phencyclidine with intent to sell it when his or her conscious objective or purpose is to sell the phencyclidine.⁶

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 four elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed phencyclidine;
2. That the defendant did so knowingly and unlawfully;
3. That the phencyclidine weighed fifty [50] milligrams or more; and
4. That the defendant possessed the phencyclidine with the intent to sell it.⁷

⁴See Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁵See Penal Law § 220.00(1). *People v. Samuels*, 90 N.Y.2d 20 (2002).

⁶See Penal Law § 15.05(1).

⁷If the defendant has denied the previous conviction or has remained mute, add the following:

"and 5. That the defendant has previously been convicted of."
See CPL 200.60(3).

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.