

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
IN THE FIRST DEGREE
(Five Thousand Seven Hundred Sixty
[5,760] Milligrams of Methadone)
Penal Law § 220.21(2)
(Committed on or after June 10, 1995)**

The (*specify*) 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 methadone and said methadone weighs five thousand seven hundred sixty [5,760] milligrams or more.

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.¹

A person KNOWINGLY possesses methadone when that person is aware that he or she is in possession of methadone.²

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

¹ 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.

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

³ See Penal Law § 220.00(2) and Public Health Law § 3396(1).

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, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed methadone;
2. That the defendant did so knowingly and unlawfully;
and
3. That the methadone weighed five thousand seven hundred sixty [5,760] milligrams 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.