

CRIMINALLY POSSESSING A HYPODERMIC INSTRUMENT
(A Misdemeanor)
PENAL LAW 220.45
(Committed on or after Sept. 1, 1967)

(Revised April 4, 2003)¹

The _____ count is Criminally Possessing a Hypodermic Instrument.

Under our law, a person is guilty of Criminally Possessing a Hypodermic Instrument when that person knowingly and unlawfully possesses [*or sells*] a hypodermic syringe [*or hypodermic needle*].

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: [“possess”], [“sell”], “knowingly,” and “unlawfully.”

[POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.²]

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

(Sell also includes an offer or agreement to sell even if actual delivery does not occur, provided that, at the time of the offer or agreement, the person has the intent and ability to make the sale. An intent is a conscious objective or purpose. Thus, a person acts with intent to sell when that person's conscious objective or purpose is to sell.)³

¹ The revision was for the purpose of re-defining the term “sale” as it applied to an offer or agreement to sell.

² See Penal Law § 10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the “Additional Charges” section at the end of this article.

³ See Penal Law § 220.00(1); *People v. Samuels*, 90 N.Y.2d 20 (2002).

A person KNOWINGLY possesses [or sells] a hypodermic syringe [or hypodermic needle] when that person is aware that he or she is in possession of [or selling] a hypodermic syringe [or hypodermic needle].⁴

A person UNLAWFULLY possesses [or sells] a hypodermic syringe [or hypodermic needle] when that person has no legal right to possess [or sell] it.⁵ Under our law, with certain exceptions not applicable here, a person has no legal right to possess [or sell] a hypodermic syringe [or hypodermic needle].

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 [or sold] a hypodermic syringe [or hypodermic needle]; and
2. That the defendant did so knowingly and unlawfully.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminally Possessing a Hypodermic Instrument as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminally Possessing a Hypodermic Instrument as charged in the ___ count.

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

⁵See, Penal Law § 220.00(2) and Public Health Law § 3396(1).