

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE**  
**FIFTH DEGREE**  
**(D Felony)**  
**(Intent to Sell a Controlled Substance)**  
**PENAL LAW 220.06(1)**  
**(Committed on or after Sept. 1, 1979)**

The \_\_\_\_\_ 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 a controlled substance with the intent to sell it.

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: “controlled substance,” “possess,” “knowingly,” “unlawfully,” “sell,” and “intent.”

The term CONTROLLED SUBSTANCE includes (specify).<sup>1</sup>

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

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

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

SELL means to sell, exchange, give or dispose of to another [*or to offer or agree to do the same*].<sup>5</sup>

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*See*, Penal Law § 220.00(5).

*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 as found in the “Additional Charges” section at the end of this chapter.

*See*, Penal Law § 15.05(2).

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

*See*, Penal Law § 220.00(1).

INTENT means conscious objective or purpose.<sup>6</sup> Thus, a person possesses (specify) with the intent to sell it if that person's conscious objective or purpose is to sell that substance.

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 (specify);
2. That the defendant did so knowingly and unlawfully; and
3. That the defendant did so with the intent to sell the (specify).

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Controlled Substance in the Fifth Degree as charged in the \_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Controlled Substance in the Fifth Degree as charged in the \_\_\_ count.

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*See*, Penal Law § 15.05(1).