

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE  
FIFTH DEGREE  
(D Felony)**

**PENAL LAW 220.06(2)  
(One-Half Ounce or More  
of a Narcotic Preparation)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.06(4)  
(One-Quarter Ounce or More  
of Concentrated Cannabis)  
(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 one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing a narcotic preparation [*or* one quarter ounce or more containing concentrated cannabis].

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: [“narcotic preparation”], “possess,” “knowingly,” “unlawfully,” and “aggregate weight.”<sup>1</sup>

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

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>3</sup>

A person KNOWINGLY possesses (specify) or more of a substance containing (specify) when that person is aware that he or she is in possession of that substance in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains (specify) and that, in the aggregate, the

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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]).

If in issue, a definition of “concentrated cannabis” can be found in Public Health Law § 3302(5).

*See*, Penal Law § 220.00(8).

*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.

substance weighs (specify) or more.<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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed a substance which, in the aggregate, weighed (specify) ounce[s] or more and which contained (specify); 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 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 either one or both 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(2) and *People v Ryan*, 82 NY2d 497 (1993).

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

*See, People v Mendoza*, 81 NY2d 963, 965 (1993).