

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
FOURTH DEGREE**

(C Felony)

**(Intent to Sell Phencyclidine -
Prior Conviction)**

PENAL LAW 220.09(13)

(Committed on or after Nov. 1, 1985)

The _____ 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 fifty milligrams or more of phencyclidine with the intent to sell it.¹

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,” “knowingly,” “unlawfully,” “sell,” and “intent.”

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

A person KNOWINGLY possesses fifty milligrams or more of phencyclidine when that person is aware that he or she is in possession of phencyclidine in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains phencyclidine and that the phencyclidine contained in the substance weighs fifty milligrams or more.³

A person UNLAWFULLY possesses phencyclidine when that person has no legal right to possess that substance.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to possess phencyclidine.

An 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. If, upon such arraignment, the defendant admits the previous conviction, the court **may not make any reference to it in the definition of the crime**. 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).”** (See, CPL 200.60[3]).

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) and *People v Ryan*, 82 NY2d 497 (1993).

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

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

INTENT means conscious objective or purpose.⁶ Thus, a person would have the intent to sell phencyclidine if that person's conscious objective or purpose was to sell phencyclidine.

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 fifty milligrams or more of phencyclidine;
2. That the defendant did so knowingly and unlawfully; and
3. That the defendant possessed the phencyclidine with the intent to sell it.⁷

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 Fourth 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 Fourth Degree as charged in the ___ count.

See, Penal Law § 220.00(1).

See, Penal Law § 15.05(1).

If the defendant has denied the previous conviction or has remained mute, add the following: **“and 4. That the defendant has previously been convicted of (specify).”** (*See*, CPL 200.60[3]).