

**CRIMINALLY USING DRUG PARAPHERNALIA**  
**SECOND DEGREE**  
**(A Misdemeanor)**  
**(Diluents, Dilutants or Adulterants)**  
**PENAL LAW 220.50(1)**  
**(Committed on or after Nov. 1, 1990)**

The \_\_\_\_\_ count is Criminally Using Drug Paraphernalia in the Second Degree.

Under our law, a person is guilty of Criminally Using Drug Paraphernalia in the Second Degree when that person knowingly possesses [*or* sells] diluents, dilutants or adulterants, [including but not limited to, any of the following: quinine hydrochloride, mannitol, mannite, lactose or dextrose] adapted for the dilution of narcotic drugs or stimulants, under circumstances evincing an intent to use [*or* under circumstances evincing knowledge that some person intends to use] the same for purposes of unlawfully mixing, compounding, or otherwise preparing any narcotic drug or stimulant.

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”], “narcotic drug,” “stimulant,” “knowingly,” “intent,” and “unlawfully.”

[POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>1</sup>]

[SELL means to sell, exchange, give or dispose of to another (*or* to offer or agree to do the same).<sup>2</sup>]

The term NARCOTIC DRUG includes  
(specify).<sup>3</sup>

The term STIMULANT includes (specify).<sup>4</sup>

A person KNOWINGLY possesses [*or* sells] diluents, dilutants or adulterants, adapted for the dilution of narcotic drugs or stimulants, when that person is aware that he or she is in possession of [*or*

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*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 chapter.

*See*, Penal Law § 220.00(1).

*See*, Penal Law § 220.00(7).

*See*, Penal Law § 220.00(11).

selling] such a substance.<sup>5</sup>

**INTENT** means conscious objective or purpose.<sup>6</sup> Thus, a person would have the intent to use diluents, dilutants or adulterants for the purpose of unlawfully mixing, compounding, or otherwise preparing any narcotic drug or stimulant if that person's conscious objective or purpose was to use that substance for that purpose.

A person UNLAWFULLY mixes, compounds, or otherwise prepares a narcotic drug or stimulant when that person has no legal right to do so.<sup>7</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to mix, compound, or otherwise prepare a narcotic drug or stimulant.

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 [*or* sold] diluents, dilutants or adulterants, adapted for the dilution of narcotic drugs or stimulants;
2. That the defendant did so knowingly; and
3. That the defendant did so under circumstances evincing an intent to use [*or* under circumstances evincing knowledge that some person intended to use] the substance for purposes of unlawfully mixing, compounding, or otherwise preparing any narcotic drug or stimulant.

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 Criminally Using Drug Paraphernalia in the Second 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 Criminally Using Drug Paraphernalia in the Second Degree as charged in the \_\_\_ count.

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*See*, Penal Law § 15.05(2).

*See*, Penal Law § 15.05(1).

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