

**PRESUMPTIVE POSSESSION - ROOM**  
**PENAL LAW 220.25 (2)**  
**(Revised Feb. 2016)<sup>1</sup>**

Under our law, the presence of a:

*Select appropriate alternative:*

narcotic drug  
a narcotic preparation  
marihuana  
phencyclidine

in open view in a room,<sup>2</sup> under circumstances evincing an intent to unlawfully mix, compound, package or otherwise prepare that substance for sale, is presumptive evidence of knowing possession of that substance by each and every person in close proximity to it at the time the substance was found [unless the substance was found on the person of one of the occupants of the room].<sup>3</sup>

“Close proximity” requires that a person be sufficiently near the drugs so as to evince his or her participation in an apparent drug-sale operation.<sup>4</sup>

Thus, if the People have proven beyond a reasonable doubt that the (*specify*) was in open view in a room [and was not on the person of any of the occupants], and that the circumstances were such as to evince an intent, that is a conscious objective or purpose, to unlawfully mix, compound, package or otherwise prepare the (*specify*) for sale, then you may, but you are not required to, infer from that fact that each and every person in close proximity to the (*specify*) at the time it was found was in knowing possession of it. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.<sup>5</sup>

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1. The February, 2016 revision was for the purpose of adding a definition of “close proximity” in accord with *People v Kims*, 24 NY3d 422 (2014). See

endnote three.

2. The statute here specifies "in a room, *other than a public place*." The italicized portion may be omitted absent an issue as to the nature of the place.

3. See Penal Law § 220.25 (2). The preceding bracketed language, and the bracketed language that follows, should be charged where an issue of fact exists as to whether the substance, when found, was on the person of one of the occupants of the room. Similarly, where an issue of fact has been raised, the jury should be instructed on the exception set forth in Penal Law § 220.25 (2) (a) (authorized possession in original container).

4. In *People v Kims*, 24 NY3d 422, 433 (2014), the Court defined "in close proximity" by explaining that "[A] defendant is in 'close proximity' within the meaning of section 220.25 (2) when the defendant is sufficiently near the drugs so as to evince defendant's participation in an apparent drug sales operation, thus supporting a presumption of defendant's knowing possession."

5. Cf. *County Court of Ulster County, New York v Allen*, 442 US 140 (1979); *People v Lemmons*, 40 NY2d 505 (1976).