

UNLAWFUL POSSESSION OF MARIHUANA
Renamed, effective August 28, 2019:
UNLAWFUL POSSESSION OF MARIHUANA
IN THE SECOND DEGREE
PENAL LAW 221.05
(Committed on or after July 27, 1977) ¹

The (*specify*) count is Unlawful Possession of Marihuana in the Second Degree.

Under our law, a person is guilty of Unlawful Possession of Marihuana in the Second Degree when that person knowingly and unlawfully possesses marihuana.

The following terms used in that definition have a special meaning:

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

A person KNOWINGLY possesses marihuana when that person is aware that he or she is in possession of marihuana.³

A person UNLAWFULLY possesses marihuana when that

¹ Effective August 28, 2019, “unlawful possession of marihuana” was renamed “unlawful possession of marihuana in the second degree.” Otherwise the elements of the crime remained the same and thus the instant charge applies to the offense committed on or after July 27, 1977.

² 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 from the “Additional Charges” section at the end of the charges for Penal Law article 220.

³ See Penal Law § 15.05(2).

person has no legal right to possess it.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to possess marihuana.

In order for you to find the defendant guilty of this offense, 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 marihuana; and
2. That the defendant did so knowingly and unlawfully.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this offense.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this offense.

⁴See Penal Law §§221.00 and 220.00(2), and Public Health Law § 3304 and § 3396(1).