

**CRIMINAL POSSESSION OF MARIHUANA  
IN THE FIFTH DEGREE  
(More than 25 grams)  
Penal Law § 221.10(2)  
(Committed on or after June 10, 1995)**

The (*specify*) count is Criminal Possession of Marihuana in the Fifth Degree.

Under our law, a person is guilty of Criminal Possession of Marihuana in the Fifth Degree when that person knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams.

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.<sup>1</sup>

A person KNOWINGLY possesses a substance containing marihuana when that person is aware that he or she is in possession of a substance containing marihuana.<sup>2</sup>

A person UNLAWFULLY possesses a substance containing marihuana when that person has no legal right to possess it.<sup>3</sup> Under our law, with certain exceptions not applicable here, a

---

<sup>1</sup> 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 from the "Additional Charges" section at the end of the charges for Penal Law article 220.

<sup>2</sup> See Penal Law § 15.05(2).

<sup>3</sup> See Penal Law §§221.00 and 220.00(2), and Public Health Law § 3304 and § 3396(1).

person has no legal right to possess marihuana.

AGGREGATE WEIGHT refers to the weight of the substance which contains the marihuana, irrespective of the amount of the marihuana actually in the substance.<sup>4</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, each of the following three elements:

1. That on or about (*date*), in the county of (*county*), the defendant, (*defendant's name*), possessed one or more preparations, compounds, mixtures or substances containing marihuana;
2. That the defendant did so knowingly and unlawfully; and
3. That, in the aggregate, the substance weighed more than twenty- five grams.

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

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

---

<sup>4</sup> See *People v. Mendoza*, 81 N.Y.2d 963, 965 (1993).