

**LOITERING IN THE FIRST DEGREE**  
**Penal Law § 240.36**  
**(Committed on or after Sept. 1, 1973)**

The (specify) count is Loitering in the First Degree.

Under our law, a person is guilty of Loitering in the First Degree when he or she loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a controlled substance.<sup>1</sup>

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>2</sup>

CONTROLLED SUBSTANCE(S) include(s) (specify).

A person UNLAWFULLY possesses or uses a controlled substance when that person has no legal right to do so.<sup>3</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to possess or use a controlled substance.

A person loiters or remains in any place with one or more individuals FOR THE PURPOSE OF UNLAWFULLY USING OR POSSESSING A CONTROLLED SUBSTANCE when that person's conscious objective or purpose is to do so. Under that definition, it is not required that the person in fact use or possess a controlled substance. What is required, is that the evidence demonstrate beyond a reasonable doubt that the person's

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<sup>1</sup> The statute here continues to state: "as defined in section 220.00 of this chapter." That portion of the statute has been omitted in lieu of defining the controlled substance(s) in issue.

<sup>2</sup> Penal Law § 10.00 (8).

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

conscious objective or purpose was to do so.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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), loitered or remained in a place with one or more persons; and
2. That the defendant did so for the purpose of unlawfully using or possessing a controlled substance.

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

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 crime.