

**FACILITATING A SEXUAL PERFORMANCE
BY A CHILD WITH A CONTROLLED SUBSTANCE**

**Penal Law § 263.30 (1)(a)
(Committed on or after Nov. 1, 2008)**

The (specify) count is Facilitating a Sexual Performance by a Child with a Controlled Substance.

Under our law, a person is guilty of Facilitating a Sexual Performance by a Child with a Controlled Substance when he or she knowingly and unlawfully possesses a controlled substance or any controlled substance that requires a prescription to obtain,

administers that substance to a person under the age of seventeen without such person's consent,

intends to commit against such person conduct constituting ¹ (specify whether use of a child in a sexual performance [Penal Law § 260.05], promoting an obscene sexual performance by a child [Penal Law § 263.10], [and/]or promoting a sexual performance by a child [Penal Law § 263.15]), and

does so commit or attempt to commit such conduct against such person.

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

The term CONTROLLED SUBSTANCE includes (specify).²

(Specify) is a controlled substance that requires a prescription to obtain.

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.³

¹ At this point the statute continues: "a felony as defined in section 263.05, 263.10, or 263.15 of this article."

² Penal Law § 220.00 (5).

³ 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

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of (specify).⁴

A person UNLAWFULLY possesses (specify) when that person has no legal right to possess it.⁵ Under our law, with certain exceptions not applicable here, a person has no legal right to possess (specify the controlled substance) [or (specify) without a prescription].

Intent means conscious objective or purpose. Thus a person INTENDS to commit conduct constituting (specify whether use of a child in a sexual performance [Penal Law § 260.05], promoting an obscene sexual performance by a child [Penal Law § 263.10], [and/or promoting a sexual performance by a child [Penal Law § 263.15]], against another when that person's conscious objective or purpose is to commit that conduct.⁶

(NAME OF APPLICABLE PENAL LAW ARTICLE 263 FELONY and its definition.)

It is not an element of this offense that the actor must know the age of the child. And it is not a defense to this charge that the actor did not know that the person who was administered the substance was less than seventeen (17) years old, or that the actor believed that such person was seventeen (17) years old or more.⁷

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 each of the following five elements:

charges for Penal Law Article 220.

⁴ See Penal Law § 15.05 (2).

⁵ See Penal Law § 220.00 (2) and Public Health Law § 3396 (1).

⁶ See Penal Law § 15.05 (1).

⁷ See Penal Law § 15.20(3).

1. That on or about (date) in the County of (County), the defendant (defendant's name) knowingly and unlawfully possessed (specify);
2. That the defendant administered such (specify) to (complainant's name) without his/her consent;
3. That (complainant's name) was less than 17 years old;
4. That the defendant intended to commit conduct constituting (specify whether use of a child in a sexual performance [Penal Law § 260.05], promoting an obscene sexual performance by a child [Penal Law § 263.10], [and/or promoting a sexual performance by a child [Penal Law § 263.15]]) against (complainant's name); and
5. That the defendant committed [or attempted to commit] *that conduct* against (complainant's name)

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.