

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE  
THIRD DEGREE**

**(B Felony)**

**(One-Half Ounce or More  
of a Narcotic Drug)**

**PENAL LAW 220.16(12)**

**(Committed on or after Sept. 1, 1979)**

The \_\_\_\_\_ count is Criminal Possession of a Controlled Substance in the Third Degree.

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Third Degree when that person knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing a narcotic drug.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “narcotic drug,” “possess,” “knowingly,” “unlawfully,” and “aggregate weight.”<sup>1</sup>

The term NARCOTIC DRUG includes (specify).<sup>2</sup>

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

A person KNOWINGLY possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing (specify) when that person is aware that he or she is in possession of such a substance in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains (specify) and that, in the aggregate, the substance weighs one-half ounce or more.<sup>4</sup>

A person UNLAWFULLY possesses (specify) when that person has no legal right to possess it.<sup>5</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to possess (specify).

AGGREGATE WEIGHT refers to the weight of the substance which contains (specify)

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Where necessary, include the definition of “ounce” which means “an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids” (Penal Law § 220.00[3]).

*See*, Penal Law § 220.00(7).

*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 as found in the “Additional Charges” section at the end of this chapter.

*See*, Penal Law § 15.05(2) and *People v Ryan*, 82 NY2d 497 (1993).

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

irrespective of the amount of the (specify) actually in the substance.<sup>6</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, both of the following two 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 of an aggregate weight of one-half ounce or more containing (specify); and
2. That the defendant did so knowingly and unlawfully.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Controlled Substance in the Third Degree as charged in the \_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Controlled Substance in the Third Degree as charged in the \_\_\_ count.

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*See, People v Mendoza*, 81 NY2d 963, 965 (1993)