

**CRIMINAL POSSESSION OF A
CONTROLLED SUBSTANCE
THIRD DEGREE
(B Felony)**

**PENAL LAW 220.16(3)
(Intent to Sell One Gram or More
of a Stimulant)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.16(4)
(One Milligram or More
of Lysergic Acid Diethylamide)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.16(5)
(Twenty-Five Milligrams or More
of a Hallucinogen)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.16(6)
(One Gram or More
of a Hallucinogenic Substance)
(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 gram or more of a stimulant [*or* one milligram or more of lysergic acid diethylamide] [*or* twenty-five milligrams or more of a hallucinogen] [*or* one gram or more of a hallucinogenic substance] with the intent to sell it.

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: ["stimulant"], ["hallucinogen"], ["hallucinogenic substance"], "possess," "knowingly," "unlawfully," "sell," and "intent."

[The term STIMULANT (*or* HALLUCINOGEN) (*or* HALLUCINOGENIC SUBSTANCE) includes (specify).¹]

POSSESS means to have physical possession or otherwise to exercise dominion or control over

See, Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

tangible property.²

A person KNOWINGLY possesses (specify) or more of (specify) when that person is aware that he or she is in possession of (specify) in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains (specify) and that the (specify) contained in the substance weighs (specify) or more.³

A person UNLAWFULLY possesses (specify) when that 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 (specify).

SELL means to sell, exchange, give or dispose of to another, [*or* to offer or agree to do the same].⁵

INTENT means conscious objective or purpose.⁶ Thus, a person would have the intent to sell (specify) if that person's conscious objective or purpose was to sell that substance.

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 three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed (specify) or more of (specify) ;
2. That the defendant did so knowingly and unlawfully; and
3. That the defendant possessed the (specify) with the intent to sell it.

Therefore, if you find that the People have proven beyond a reasonable doubt each 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 any one or more 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.

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).

See, Penal Law § 220.00(1).

See, Penal Law § 15.05(1).