

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

**(B Felony)**

**PENAL LAW 220.16(8)**

**(Five Grams or More of a Stimulant)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.16(9)**

**(Five Milligrams or More  
of Lysergic Acid Diethylamide)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.16(10)**

**(One Hundred Twenty-Five Milligrams  
or More of a Hallucinogen)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.16(11)**

**(Five Grams or More  
of a Hallucinogenic Substance)  
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.16(13)**

**(One Thousand Two Hundred Fifty Milligrams or More of Phencyclidine)  
(Committed on or after Nov. 1, 1985)**

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 five grams or more of a stimulant [*or* five milligrams or more of lysergic acid diethylamide] [*or* one hundred twenty-five milligrams or more of a hallucinogen<sup>1</sup>] [*or* five grams or more of a hallucinogenic substance] [*or* one thousand two hundred fifty milligrams or more of phencyclidine].

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,” and “unlawfully.”

[The term STIMULANT (*or* HALLUCINOGEN) (*or* HALLUCINOGENIC SUBSTANCE) includes *(specify)*.<sup>2</sup>]

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Penal Law § 220.16(10) proscribes the knowing and unlawful possession of “one hundred twenty-five milligrams of a hallucinogen.” Undoubtedly, the intent of the statute was to proscribe the knowing and unlawful possession of one hundred twenty-five milligrams **or more** of a hallucinogen, and the charge is drawn to reflect that intent.

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

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

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.<sup>4</sup>

A person UNLAWFULLY possesses a (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).

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 (specify) or more of (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*, 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).