

**FACILITATING A SEX OFFENSE  
WITH A CONTROLLED SUBSTANCE  
(D Felony)  
(Forcible Compulsion)  
PENAL LAW 130.90  
(Committed on or after February 1, 2001)**

The \_\_\_\_\_ count is Facilitating a Sex Offense with a Controlled Substance.

Under our law, a person is guilty of Facilitating a Sex Offense with a Controlled Substance when he or she knowingly and unlawfully possesses a controlled substance and administers such substance to another person without such person's consent and with intent to commit against such person conduct constituting (name of applicable Penal Law Article 130 felony) and commits or attempts to commit such conduct.

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: "controlled substance," "possess," "knowingly," and "unlawfully," "without such person's consent," "intent," and (name of applicable Penal Law Article 130 felony).

The term CONTROLLED SUBSTANCE includes (specify).<sup>1</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>2</sup>

A person KNOWINGLY possesses (specify) when that

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<sup>1</sup> Penal Law § 220.00(5).

<sup>2</sup> 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 charges for Penal Law article 220.

person is aware that he or she is in possession of (specify).<sup>3</sup>

A person UNLAWFULLY possesses (specify) when that person has no legal right to possess it.<sup>4</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to possess (specify).

A person administers a controlled substance to another person WITHOUT SUCH PERSON'S CONSENT when the lack of consent results from forcible compulsion<sup>5</sup>

FORCIBLE COMPULSION means to intentionally compel either:

(1) by the use of physical force;

or

(2) by a threat, express or implied, which places a person in fear of immediate death or physical injury to himself or herself [*or* another person] or in fear that he or she [*or* another person] will immediately be kidnapped.<sup>6</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to commit conduct constituting (name of applicable Penal Law Article 130 felony) against a person when his

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<sup>3</sup>See Penal Law § 15.05(2).

<sup>4</sup>See Penal Law § 220.00(2) and Public Health Law § 3396(1).

<sup>5</sup> Penal Law § 130.05(2)(a).

<sup>6</sup> See Penal Law § 130.00(8); Penal Law §15.05(1). The definition has been modified by adding the term “intentionally” in the first line to reflect the holding of *People v. Williams*, 81 NY2d 303 (1993). See also, *People v. Gega*, 72 N.Y.2d 489 (1988) directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions.

or her conscious objective or purpose is to do so.<sup>7</sup>

(NAME OF APPLICABLE PENAL LAW ARTICLE 130  
FELONY and its definition.)

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 four elements:

1. That on or about (date), in the county of (county), the defendant (defendant's name) knowingly and unlawfully possessed (specify the substance);
2. That the defendant administered that substance to (complainant's name) without his/her consent by use of forcible compulsion;
3. That defendant did so with intent to commit (name of applicable Penal Law Article 130 felony) against (complainant's name); and
4. That the defendant committed or attempted to commit that crime.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those four elements, you must find the defendant guilty of the crime of Facilitating a Sex Offense With a Controlled Substance 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 all of those elements, you must find the defendant not guilty of the crime of Facilitating a Sex Offense With a Controlled Substance as charged in the \_\_\_\_\_ count.

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<sup>7</sup>See Penal Law §15.05(1).