

**PROMOTING PRISON CONTRABAND  
FIRST DEGREE  
(D Felony)  
(Inmate Possesses Dangerous Contraband)  
Penal Law 205.25 (2)  
(Committed on or after Sept. 1, 1967)  
(Revised January 16, 2009)<sup>1</sup>**

The \_\_\_\_\_ count is Promoting Prison Contraband in the First Degree.

Under our law, a person is guilty of Promoting Prison Contraband in the First Degree when being a person confined in a detention facility, he or she knowingly and unlawfully makes, obtains or possesses any dangerous contraband.

Some of the terms used in the definition have their own special meaning in our law. I will now give you the meaning of the following terms: “detention facility,” “contraband,” “dangerous contraband,” “possess,” “knowingly,” and “unlawfully.”

DETENTION FACILITY means any place used for confinement, pursuant to an order of a court, of a person

*Select appropriate alternative(s):*

- (a) charged with or convicted of offense, or
- (b) charged with being or adjudicated a youthful offender, person in need of supervision or juvenile delinquent, or
- (c) held for extradition or as a material witness, or
- (d) otherwise confined pursuant to an order of a court.<sup>2</sup>

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<sup>1</sup> The purpose of this revision was to expand the definition of “dangerous contraband” to include language from *People v. Finley*, 10 N.Y.3d 647, 657 (2008).

<sup>2</sup>Penal Law §205.00(1).

CONTRABAND means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order.<sup>3</sup>

DANGEROUS CONTRABAND means contraband which is capable of such use as may endanger the safety or security of a detention facility or any person therein<sup>4</sup>

[*Add as appropriate:*

in that its particular characteristics are such that there is a substantial probability that the item will be used in a manner that is likely to cause death or other serious injury, to facilitate an escape, or to bring about other major threats to a detention facility's institutional safety or security].<sup>5</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>6</sup>

A person KNOWINGLY makes, obtains, or possesses dangerous contraband when that person is aware that he or she is doing so.<sup>7</sup>

A person UNLAWFULLY makes, obtains, or possesses dangerous contraband when that person has no legal right to do so.

In order for your to find the defendant guilty of this crime,

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<sup>3</sup> Penal Law §205.00(3).

<sup>4</sup> Penal Law §205.00(3).

<sup>5</sup> *People v. Finley*, 10 N.Y.3d 647, 657 (2008).

<sup>6</sup> Penal Law §10.00(8). If necessary, an expanded definition of "possession" is available in the section of General Instructions under Possession.

<sup>7</sup> See, Penal Law §15.05(2).

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) made, obtained or possessed dangerous contraband;
2. That the defendant did so knowingly and unlawfully; and
3. That the defendant was a person confined in a detention facility.

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 Promoting Prison Contraband in the First 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 Promoting Prison Contraband in the First Degree as charged in the \_\_\_\_\_ count.