

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
IN THE FIFTH DEGREE
(Intent to Sell)
Penal Law § 220.06 (1)
(Committed on or after Sept. 1, 1979)**

The (specify) count is Criminal Possession of a Controlled Substance in the Fifth Degree.

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Fifth Degree when that person knowingly and unlawfully possesses a controlled substance with the intent to sell it.

The following terms used in that definition have a special meaning:

The term CONTROLLED SUBSTANCE includes (specify).¹

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

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of (specify).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).

¹See Penal Law § 220.00 (5).

²See 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 this article.

³See Penal Law § 15.05 (2). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

⁴ See Penal Law § 220.00 (2) and Public Health Law § 3396 (1).

SELL means to sell, exchange, give or dispose of to another.⁵

INTENT means conscious objective or purpose. Thus, a person possesses (specify) with intent to sell it when his or her conscious objective or purpose is to sell the (specify).⁶

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, each of the following three elements:

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

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

⁵ See Penal Law § 220.00 (1). *People v Samuels*, 99 NY2d 20 (2002).

⁶ See Penal Law § 15.05 (1).