

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE  
IN THE FIFTH DEGREE  
(Aggregate Weight Counts)**

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**Penal Law § 220.06(2)  
(One-Half [1/2] Ounce or More  
Containing a Narcotic Preparation)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.06(8)  
(28 grams or More Containing  
Gamma Hydroxybutyric Acid)**

**(Committed on or after November 1, 2003)**

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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 one or more preparations, compounds, mixtures or substances containing

*Select the appropriate alternative:*

a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half [1/2] ounce or more.

gamma hydroxybutyric acid and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more. <sup>2</sup>

The following terms used in that definition have a special meaning:<sup>3</sup>

[The term NARCOTIC PREPARATION includes (specify).<sup>4</sup>]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>5</sup>

A person KNOWINGLY possesses a substance containing (specify) when that person is aware that he or she is in possession of a substance containing (specify).<sup>6</sup>

A person UNLAWFULLY possesses (specify) when that

<sup>2</sup> If in issue, the applicable definition of “gamma hydroxybutyric acid” is in Public Health Law §3306(l)(e)(4).

<sup>3</sup> Where necessary, include the definition of “ounce” which means “an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids” (Penal Law § 220.00[3]).

<sup>4</sup> See Penal Law § 220.00(8).

<sup>5</sup> 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 from the “Additional Charges” section at the end of this article.

<sup>6</sup> See Penal Law § 15.05(2); Penal Law § 15.20(4). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

person has no legal right to possess it.<sup>7</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to possess (specify) .

AGGREGATE WEIGHT refers to the weight of the substance which contains the (specify), irrespective of the amount of the (specify) actually in the substance.<sup>8</sup>

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 one or more preparations, compounds, mixtures or substances containing (specify) ;
2. That the defendant did so knowingly and unlawfully; and
3. That, in the aggregate, such substance weighed (specify) or more.

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.

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<sup>7</sup>See Penal Law § 220.00(2) and Public Health Law § 3396(1).

<sup>8</sup>See *People v Mendoza*, 81 NY2d 963, 965 (1993).