

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

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**Penal Law § 220.09(1)  
(One-Eighth [1/8] Ounce or More  
Containing a Narcotic Drug)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(2)  
(One-Half [1/2] Ounce or More  
Containing Methamphetamine)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(3)  
(Two [2] Ounces or More  
Containing a Narcotic Preparation  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(15)  
(Two Hundred [200] 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 Fourth Degree.

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Fourth Degree when that person knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing:

*Select the appropriate alternative:*

a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth [1/8] ounce or more.

methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of one-half [1/2] ounce or more.

a narcotic preparation and said preparations, compounds, mixtures, or substances are of an aggregate weight of two [2] ounces or more.

gamma hydroxybutyric acid and said preparations, compounds, mixtures or substances are of an aggregate weight of two hundred [200] grams or more.

The following terms used in that definition have a special meaning:<sup>1</sup>

[The term NARCOTIC DRUG (or NARCOTIC PREPARATION) includes (specify).<sup>2</sup>]

POSSESS means to have physical possession or otherwise

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<sup>1</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>3</sup> See Penal Law § 220.00(7) (narcotic drug); Penal Law § 220.00(8) (narcotic preparation).

to exercise dominion or control over tangible property.<sup>3</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>4</sup>

A person UNLAWFULLY possesses (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) .

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>6</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

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<sup>4</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>5</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.

<sup>6</sup>See Penal Law § 220.00(2) and Public Health Law § 3396(1).

<sup>7</sup>See *People v Mendoza*, 81 NY2d 963, 965 (1993).

3. That, in the aggregate, the 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.