

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE  
IN THE THIRD DEGREE  
(Pure Weight Counts)**

---

**Penal Law § 220.16(8)  
(Five [5] Grams or More of a Stimulant)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(9)  
(Five [5] Milligrams or More  
of Lysergic Acid Diethylamide)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(10)  
(One Hundred Twenty-Five [125] Milligrams  
or More of a Hallucinogen)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(11)  
(Five [5] Grams or More  
of a Hallucinogenic Substance)  
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(13)  
(One Thousand Two Hundred Fifty  
[1,250] Milligrams or More  
of Phencyclidine)  
(Committed on or after June 10, 1995)**

---

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

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Third Degree when that person knowingly and unlawfully possesses

*Select the appropriate alternative:*

a stimulant and the stimulant weighs five [5] grams or more.

lysergic acid diethylamide and the lysergic acid diethylamide weighs five [5] milligrams or more.

a hallucinogen and the hallucinogen weighs one hundred twenty-five [125] milligrams or more.

a hallucinogenic substance and the hallucinogenic substance weighs five [5] grams or more.

phencyclidine and the phencyclidine weighs one thousand two hundred fifty [1,250] milligrams or more.

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

[The term STIMULANT (or HALLUCINOGEN) (or HALLUCINOGENIC 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 person is aware that he or she is in possession of (specify).<sup>3</sup>

A person UNLAWFULLY possesses (specify) when that

---

<sup>1</sup>See Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

<sup>2</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>3</sup>See Penal Law § 15.05(2). 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>4</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to possess (specify).

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 (specify) 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.

---

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