**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE**

**THIRD DEGREE**

**(Intent to Sell; Pure Weight Counts)**

**Penal Law § 220.16(3)
(One [1] Gram or More
of a Stimulant)
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(4)
(One [1] Milligram or More
of Lysergic Acid Diethylamide)
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(5)
(Twenty-Five [25] Milligrams or More
of a Hallucinogen)
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(6)
(One [1] Gram or More
of a Hallucinogenic Substance)
(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 with the intent to sell it and the stimulant weighs one [1] gram or more.

lysergic acid diethylamide with the intent to sell it and the lysergic acid diethylamide weighs one [1] milligram or more.

a hallucinogen with the intent to sell it and the hallucinogen

weights twenty-five [25] milligrams or more.

a hallucinogenic substance with the intent to sell it and the hallucinogenic substance weighs one [1] gram or more.

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

[The term STIMULANT (*or* HALLUCINOGEN) (*or* HALLUCINOGENIC 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)*  .

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

1*See* Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

2*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.

3*See* 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).

5*See*, Penal Law § 220.00(1). *People v. Samuels*, 99 N.Y.2d 20 (2002).

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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 four 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;
3. That the  *(specify)*  weighed *(specify)* or more; and
4. 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.

6*See*, Penal Law § 15.05(1).

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