

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
THIRD DEGREE
(B Felony)
(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 _____ 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 weighs 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.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: ["stimulant,"] ["hallucinogen,"] ["hallucinogenic substance,"] "possess," "knowingly," "unlawfully," "sell," and "intent."

[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).

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

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.

⁴See 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 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.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Controlled Substance in the Third Degree as charged in the ____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Controlled Substance in the Third Degree as charged in the ____ count.

⁵See, Penal Law § 220.00(1). *People v. Samuels*, 90 N.Y.2d 20 (2002).

⁶See, Penal Law § 15.05(1).