

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
THIRD DEGREE
(B Felony)
(Intent to Sell One-eighth [1/8] Ounce or
More Containing Methamphetamine)
PENAL LAW 220.16(7)
(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 one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers, with intent to sell it and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth [1/8] ounce 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: "possess," "knowingly," "unlawfully," "sell," "intent," and "aggregate weight."

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹

A person KNOWINGLY possesses a substance containing methamphetamine, its salts, isomers or salts of isomers, when that person is aware that he or she is in possession of a substance containing methamphetamine, its salts, isomers or salts of

¹See, 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.

isomers.²

A person UNLAWFULLY possesses methamphetamine, its salts, isomers or salts of isomers, when that person has no legal right to possess it.³ Under our law, with certain exceptions not applicable here, a person has no legal right to possess methamphetamine, its salts, isomers or salts of isomers.

SELL means to sell, exchange, give or dispose of to another.⁴

INTENT means conscious objective or purpose. Thus, a person possesses a substance containing methamphetamine, its salts, isomers or salts of isomers, with intent to sell it when his or her conscious objective or purpose is to do so.⁵

AGGREGATE WEIGHT refers to the weight of the substance which contains the methamphetamine or its salts, isomers or salts of isomers, irrespective of the amount of the methamphetamine or its salts, isomers or salts of isomers actually in the substance.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 one or more

²See 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.

³See Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁴See Penal Law § 220.00(1). *People v. Samuels*, 90 N.Y.2d 20 (2002).

⁵See Penal Law § 15.05(1).

⁶See *People v Mendoza*, 81 NY2d 963, 965 (1993).

preparations, compounds, mixtures or substances containing methamphetamine, or its salts, isomers or salts of isomers;

2. That the defendant did so knowingly and unlawfully;
3. That, in the aggregate, the substance weighed one-eighth [1/8] ounce or more; and
4. That the defendant possessed such substance 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.