

**OPERATING AS A MAJOR TRAFFICKER
(A-I Felony)
PENAL LAW 220.77(3)
(Profiteer - Possession)
(Committed on or after Nov. 1, 2009)**

The ____ count is Operating as a Major Trafficker.

A person is guilty of Operating as a Major Trafficker when, as a profiteer, he or she knowingly and unlawfully possesses, on one or more occasions within six months or less, a narcotic drug with intent to sell the same, and such narcotic drugs have a total aggregate value of seventy-five thousand dollars 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: “narcotic drug,” “possess,” “knowingly,” “unlawfully,” “sell,” “intent,” and “profiteer.”

The term NARCOTIC DRUG 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. Under our law, with certain exceptions not applicable here, a person has no legal right to possess (*specify*).⁴

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

1 See Penal Law § 220.00(7).

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).

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

PROFITEER means a person who:

Select appropriate alternative(s):

is a director of a controlled substance organization;

is a member of a controlled substance organization and has managerial responsibility over one or more other members of that organization; or

arranges, devises or plans one or more transactions constituting a felony under this article so as to obtain profits or expected profits.

A person is not a profiteer if he or she is acting only as an employee; or if he or she is acting as an accommodation to a friend or relative; or if he or she is acting only under the direction and control of others and exercises no substantial, independent role in arranging or directing the transactions in question.⁷

[CONTROLLED SUBSTANCE ORGANIZATION means four or more persons sharing a common purpose to engage in conduct that constitutes or advances the commission of (*specify*.)]⁸

[DIRECTOR means a person who is the principal administrator, organizer, or leader of a controlled substance organization or one of several principal administrators, organizers, or leaders of a controlled substance organization.⁹]

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, both of the following two elements:

6 See Penal Law §15.05(1).

7 See Penal Law § 220.00(20).

8 See Penal Law § 220.00(18). The statute reads “a felony under this article,” and the judge should insert here the appropriate crime(s), for example, “a knowing and unlawful sale of a controlled substance.”

9 See Penal Law § 220.00(19).

1. That from (specify time period), in the county of (county)¹⁰ the defendant, (defendant's name), as a profiteer, knowingly and unlawfully possessed, on one or more occasions within six months or less, a narcotic drug with intent to sell the same; and
2. That such narcotic drugs had a total aggregate value of seventy-five thousand dollars or more.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Operating as a Major Trafficker as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Operating as a Major Trafficker as charged in the _____ count.

¹⁰ With respect to the county wherein the crime is alleged to have been committed, if venue or jurisdiction is at issue, the trial judge is advised to charge the applicable Venue charge contained in the General Charges section.