

**CRIMINALLY POSSESSING A
HYPODERMIC INSTRUMENT
(A Misdemeanor)
PENAL LAW 220.45
(Committed on or after Sept. 1, 1967)**

The _____ count is Criminally Possessing a Hypodermic Instrument.

Under our law, a person is guilty of Criminally Possessing a Hypodermic Instrument when that person knowingly and unlawfully possesses [*or sells*] a hypodermic syringe [*or hypodermic needle*].

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”], [“sell”], [“knowingly,”] and [“unlawfully.”]

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

[SELL means to sell, exchange, give or dispose of to another (*or to offer or agree to do the same*).²]

A person KNOWINGLY possesses [*or sells*] a hypodermic syringe [*or hypodermic needle*] when that person is aware that he or she is in possession of [*or selling*] a hypodermic syringe [*or hypodermic needle*].³

A person UNLAWFULLY possesses [*or sells*] a hypodermic syringe [*or hypodermic needle*] when that person has no legal right to possess [*or sell*] it.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to possess [*or sell*] a hypodermic syringe [*or hypodermic needle*].

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:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed [*or sold*] a hypodermic syringe [*or hypodermic needle*]; and

See, Penal Law § 10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the “Additional Charges” section at the end of this chapter.

See, Penal Law § 220.00(1).

See, Penal Law § 15.05(2).

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

2. That the defendant did so knowingly and unlawfully.

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 Criminally Possessing a Hypodermic Instrument 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 Criminally Possessing a Hypodermic Instrument as charged in the ___ count