

## **PRESUMPTIVE POSSESSION - AUTOMOBILE PENAL LAW § 220.25(1)<sup>1</sup>**

Under our law, the presence of a controlled substance in an automobile is presumptive evidence of knowing possession of that substance by each and every person in the automobile at the time the controlled substance was found [unless the controlled substance was concealed upon the person of one of the occupants].<sup>2</sup> What this means is that, if the People have proven beyond a reasonable doubt that the (*specify*) was in a vehicle [and was not concealed upon the person of any of the occupants], then you may, but you are not required to, infer from that fact that each and every person inside the vehicle when the (*specify*) was found was in knowing possession of it. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.<sup>3</sup>

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<sup>1</sup> The statute specifies that this presumption applies to a controlled substance "in an automobile, other than a public omnibus."

<sup>2</sup> See Penal Law § 220.25(1). Bracketed material should be charged where an issue of fact exists as to whether the controlled substance, when found, was concealed upon the person of one of the occupants of the vehicle. Similarly, where an issue of fact has been raised, the jury should be instructed on the exceptions set forth in Penal Law §§ 220.25(1)(a) [duly licensed operator for hire] and 220.25(1)(b) [authorized possession in original container].

<sup>3</sup> *Cf. People v Lemmons*, 40 NY2d 505 (1976).