

**FACILITATING A SEX OFFENSE
WITH A CONTROLLED SUBSTANCE
(D Felony)
(Incapacity to Consent)
PENAL LAW 130.90
(Committed on or after February 1, 2001)**

The _____ count is Facilitating a Sex Offense with a Controlled Substance.

Under our law, a person is guilty of Facilitating a Sex Offense with a Controlled Substance when he or she knowingly and unlawfully possesses a controlled substance and administers such substance to another person without such person's consent and with intent to commit against such person conduct constituting (name of applicable Penal Law Article 130 felony) and commits or attempts to commit such conduct.

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: "controlled substance," "possess," "knowingly," and "unlawfully," "without such person's consent," "intent," and (name of applicable Penal Law Article 130 felony).

The term CONTROLLED 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

¹ Penal Law § 220.00(5).

² 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 the charges for Penal Law article 220.

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).

A person administers a controlled substance to another person WITHOUT SUCH PERSON'S CONSENT when that person is deemed by law to be incapable of consent. Under our law, a person is deemed incapable of consenting to (specify) when he or she is

[NOTE: Select appropriate alternative:

less than seventeen (17) years old.⁵

It is not a defense to this charge that the actor did not know that the person to whom the controlled substance was administered was less than seventeen (17) years old, or that the actor believed that such person was seventeen (17) years old or more on the date of the crime.⁶

or mentally disabled.⁷

MENTALLY DISABLED means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the

³See, Penal Law § 15.05(2).

⁴See, Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁵Penal Law § 130.05(3)(a).

⁶See, Penal Law § 15.20(3).

⁷ Penal Law § 130.05(3)(b).

nature of his or her conduct.⁸

or mentally incapacitated.⁹

MENTALLY INCAPACITATED means that a person is rendered temporarily incapable of appraising or controlling his or her conduct owing to the influence of a narcotic or intoxicating substance administered to him or her without his or her consent (*or* to any other act committed upon him or her without his or her consent).¹⁰

or physically helpless.¹¹

PHYSICALLY HELPLESS means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.¹²

or

committed to the care and custody of the state department of correctional services or a hospital,¹³ and the actor is an

⁸ Penal Law § 130.00(5).

⁹ Penal Law § 130.05(3)(c).

¹⁰ Penal Law § 130.00(6).

¹¹ Penal Law § 130.05(3)(d).

¹² Penal Law § 130.00(7).

¹³ If in issue, the definition of “hospital” is set forth in Correction Law §400(2).

employee,¹⁴ not married to such person,¹⁵ who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.¹⁶

or

committed to the care of a local correctional facility,¹⁷ and the actor is an employee,¹⁸ not married to such person,¹⁹ who knows or reasonably should know that such person is committed to the care and custody of such facility.²⁰

or

committed to or placed with the office of children and family services and in residential care, and the actor is an employee,²¹ not married to such person,²² who knows or

¹⁴ If in issue, the definition of “employee” is set forth in Penal Law §130.05(3)(e).

¹⁵ If in issue, the definition of “not married” is set forth in Penal Law §130.00(4).

¹⁶ Penal Law §130.05(3)(e).

¹⁷ If in issue, the definition of “local correctional facility” is set forth in Correction Law §40(2).

¹⁸ If in issue, the definition of “employee” is set forth in Penal Law §130.05(3)(f).

¹⁹ If in issue, the definition of “not married” is set forth in Penal Law §130.00(4).

²⁰ Penal Law §130.05(3)(f).

²¹ If in issue, the definition of “employee” is set forth in Penal Law §130.05(3)(g).

²² If in issue, the definition of “not married” is set forth in Penal Law §130.00(4).

reasonably should know that such person is committed to or placed with the office of children and family services and in residential care.^{23]}

NOTE: This is the end of definitions and the resumption of the charge:

Thus, the administration of a controlled substance to such a person is always deemed to be without that person's consent, even if in fact that person did consent.

INTENT means conscious objective or purpose. Thus, a person acts with intent to commit conduct constituting (name of applicable Penal Law Article 130 felony) against a person when his or her conscious objective or purpose is to do so.²⁴

(NAME OF APPLICABLE PENAL LAW ARTICLE 130 FELONY and its definition.)

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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) knowingly and unlawfully possessed (specify the substance);
2. That the defendant administered that substance to (complainant's name) without his/her consent because (name of complainant) was incapable of consent;
3. That defendant did so with intent to commit (name of applicable Penal Law Article 130 felony) against (complainant's name); and

²³Penal Law §130.05(3)(g).

²⁴See, Penal Law §15.05(1).

4. That the defendant committed or attempted to commit that crime.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those four elements, you must find the defendant guilty of the crime of Facilitating a Sex Offense With a Controlled Substance 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 all of those elements, you must find the defendant not guilty of the crime of Facilitating a Sex Offense With a Controlled Substance as charged in the _____ count.