**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE**

**IN THE FOURTH DEGREE**

**(Pure Weight Counts)**

**Penal Law § 220.09(4)**

**(One [1] Gram or More of a Stimulant)**

**(Committed on or after June 10, 1995)**

**Penal Law § 220.09(5)
  
(One [1] Milligram or More of
  
Lysergic Acid Diethylamide)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(6)
  
(Twenty-Five [25] Milligrams or More
  
of a Hallucinogen)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(7)
  
(One [1] Gram or More
  
of a Hallucinogenic Substance)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(8)
  
(Ten [10] Ounces or More
  
of a Dangerous Depressant)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(9)**

**(Two [2] Pounds or More of a Depressant)**

**(Committed on or after June 10, 1995)**

**Penal Law § 220.09(11)
  
(Two Hundred Fifty [250] Milligrams or More of
  
Phencyclidine)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.09(12)
  
(Three Hundred Sixty [360] Milligrams or More of
  
Methadone)
  
(Committed on or after June 10, 1995)**

**PENAL LAW 220.09(14)**

**(Four thousand [4000] Milligrams or More of Ketamine)**

**(Committed on or after January 22, 1998)**

**(Revised April 4, 2003)1**

The (*specify*) count is Criminal Possession of a Controlled Substance in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Fourth Degree when that person knowingly and unlawfully possesses:

*Select the appropriate alternative:*

a stimulant and said stimulant weighs one [1] gram or more.

lysergic acid diethylamide and said lysergic acid diethylamide weighs one [1] milligram or more.

a hallucinogen and said hallucinogen weighs twenty-five [25] milligrams or more.

a hallucinogenic substance and said hallucinogenic substance weighs one [1] gram or more.

a dangerous depressant and such dangerous depressant weighs ten [10] ounces or more.

a depressant and such depressant weighs two [2] pounds

1 The revision was for the purpose of adding the drug ketamine. Penal Law § 220.09(14).

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or more.

phencyclidine and said phencyclidine weighs two hundred fifty [250] milligrams or more.

methadone and said methadone weighs three hundred sixty [360] milligrams or more.

ketamine and said ketamine weighs four thousand [4000] milligrams or more.

The following terms used in that definition have a special meaning:

[The term STIMULANT (*or* HALLUCINOGEN) (*or* HALLUCINOGENIC SUBSTANCE (*or* DANGEROUS DEPRESSANT) (*or* DEPRESSANT) includes  *(specify)*  .2]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property. 3

A person KNOWINGLY possesses  *(specify)*  when that person is aware that he or she is in possession of  *(specify)*  .4

A person UNLAWFULLY possesses  *(specify)*  when that person has no legal right to possess it.5 Under our law, with certain exceptions not applicable here, a person has no legal right to possess  *(specify)*  .

2 *See* Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance); 220.00(12) (dangerous depressant); 220.00(13) (depressant).

3 *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.

4 *See* Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

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

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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 three elements:

1. That on or about  *(date)*  , in the county of  *(county)*  , the defendant,  *(defendant's name)*  , possessed *specify*;
2. That the defendant did so knowingly and unlawfully; and
3. That the *(specify)*  weighed *(specify)* or more.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

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