

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE  
IN THE SEVENTH DEGREE  
(A Misdemeanor)  
Penal Law § 220.03  
(Committed on or after September 18, 2011)<sup>1</sup>**

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

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Seventh Degree when that person knowingly and unlawfully possesses a controlled substance.

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

The term CONTROLLED SUBSTANCE includes (*specify*).

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>2</sup>

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<sup>1</sup> The charge was initially written to apply to the commission of the crime on or after September 1, 1979. There were two subsequent statutory amendments affecting the statute defining this crime. Accordingly, in 2010, the charge was revised for the purpose of incorporating the amendment of the statute regarding possession of a “residual amount” of a controlled substance in or on hypodermic syringes or needles. L. 2010, ch. 284, effective October 28, 2010. Then in 2012, the charge was revised for the purpose of incorporating the applicable provisions of Penal Law § 220.78. L. 2011, ch. 154, effective September 18, 2011. Absent the applicability of those amendments to the case on trial, the charge remains viable for any crime committed on or after September 1, 1979.

<sup>2</sup> Penal Law § 10.00(8). If necessary, an expanded definition of “possession” is available in the section on Instructions of General Applicability under Possession.

A person KNOWINGLY possesses (*specify*) when that person is aware that he or she is in possession of (*specify*).<sup>3</sup>

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

Add as may be required by law.<sup>4</sup>

[It shall not be a violation of this law when a person possesses a residual amount of a controlled substance in or on a hypodermic syringe or hypodermic needle obtained and possessed pursuant to law.]

[It shall not be a violation of this law when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care for either another person or him or herself because such person is experiencing a

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<sup>3</sup> See Penal Law § 15.05(2). If necessary, an expanded definition of "knowingly" is available in the section on Instructions of General Applicability under Culpable Mental States.

<sup>4</sup> It is not settled whether each of the following exemptions constitute an "element" of the crime to be pleaded and disproved by the People in each case, or whether each constitutes a defense to be raised by the defendant in an individual case before the People are required to disprove same. See, e.g., *People v. Rodriguez*, 68 NY 2d 674 (1986), reversing for reasons stated in the dissenting opinion at the Appellate Division, 113 A.D.2d 337 (the government was required to plead and prove that the defendant possessed a firearm in a place that was not the defendant's home or place of business); *People v. Santana*, 7 NY3d 234, 237 (2006) (the exception reference in the definition of the crime of criminal contempt [Penal Law § 215.50(3)] constituted a "proviso that the accused may raise in defense of the charge rather than an exception that must be pleaded by the People in the accusatory instrument"); *People v. Davis*, 13 NY3d 17, 31 (2009) ("The main goal of the interpretative rules governing exceptions and provisos is to discover the intention of the enacting body," and that intent may be divined by "common sense and [the rules of] reasonable pleading").

drug or alcohol overdose or other life threatening medical emergency.<sup>5</sup>

The terms, “health care” and “drug or alcohol overdose” are defined to mean the following:

HEALTH CARE means the professional services provided to a person experiencing a drug or alcohol overdose by a health care professional licensed, registered or certified by law <sup>6</sup> who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services for a person experiencing a drug or alcohol overdose.

DRUG OR ALCOHOL OVERDOSE means an acute condition including, but not limited to, physical illness, coma, mania, hysteria or death, which is the result of consumption or use of a controlled substance or alcohol and relates to an adverse reaction to or the quantity of the controlled substance or alcohol or a substance with which the controlled substance or alcohol was combined; provided that a patient's condition shall be deemed to be a drug or alcohol overdose if a prudent layperson, possessing an average knowledge of medicine and health, could reasonably believe that the condition is in fact a drug or alcohol overdose and (except as to death) requires health care.<sup>7]</sup>

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<sup>5</sup> See Penal Law § 220.78 and the CJI2d instructions for that section.

<sup>6</sup> The statute here specifies “under title eight of the education law or article thirty of the public health law.” Penal Law § 220.78(3)(b). If the professional’s authority to provide health care is in issue, it will be necessary to modify the instruction accordingly.

<sup>7</sup> See Penal Law § 220.78(3)(a). The instruction tracks the statutory definition except that the words “or overdose” after the words “Drug or alcohol overdose” are omitted as redundant.

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 (*specify number*) elements:

1. That on or about (*date*), in the county of (*county*), the defendant, (*defendant's name*), possessed (*specify*); and
2. That the defendant did so knowingly and unlawfully [;and
- [3. That such (*specify*) was not a residual amount of a controlled substance in or on a hypodermic syringe or hypodermic needle obtained and possessed pursuant to law] [; and]
- [4. That such (*specify*) was not discovered as a result of seeking immediate health care for either another person or him or herself because such person was experiencing a drug or alcohol overdose or other life threatening medical emergency.]

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