

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
FIFTH DEGREE
(D Felony)
(Pure Weight Counts)**

**PENAL LAW 220.06(3)
(Fifty [50] Milligrams or More
of Phencyclidine)
(Committed on or after June 10, 1995)**

**PENAL LAW 220.06(5)
(Five Hundred [500] Milligrams or More
of Cocaine)
(Committed on or after June 10, 1995)**

**PENAL LAW 220.06(6)
(More than One thousand Milligrams
of Ketamine)
(Committed on or after January 22, 1998)**

(Revised April 4, 2003)¹

The _____ count is Criminal Possession of a Controlled Substance in the Fifth Degree.

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

Select appropriate alternative:

phencyclidine and said phencyclidine weighs fifty milligrams or more.

¹ The revision was for the purpose of including Penal Law § 220.06(6), effective January 22, 1998, which added, as a crime, the knowing and unlawful possession of Ketamine.

cocaine and said cocaine weighs five hundred milligrams or more.

ketamine and said ketamine weighs more than one thousand milligrams.

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," "knowingly," and "unlawfully."

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

A person KNOWINGLY possesses (specify) when that 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).

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);

²See 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.

³See Penal Law § 15.05(2). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

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

2. That the defendant did so knowingly and unlawfully;
and
3. That the (specify) weighed (specify).

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Controlled Substance in the Fifth Degree 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 more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Controlled Substance in the Fifth Degree as charged in the ___ count.