

**CRIMINALLY POSSESSING A HYPODERMIC INSTRUMENT**  
**Penal Law § 220.45**  
**(Committed on or after Sept. 1, 1967)**

(Revised April 4, 2003 and Dec. 2020) <sup>1</sup>

The (specify) count is Criminally Possessing a Hypodermic Instrument.

Under our law, a person is guilty of Criminally Possessing a Hypodermic Instrument when that person knowingly and unlawfully possesses [or sells] a hypodermic syringe [or hypodermic needle].

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

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

[SELL means to sell, exchange, give or dispose of to another.]

[Sell also includes an offer or agreement to sell even if actual delivery does not occur, provided that, at the time of the offer or agreement, the person has the intent and ability to make the sale. An intent is a conscious objective or purpose. Thus, a person acts with intent to sell when that person's conscious

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<sup>1</sup> The 2003 revision was for the purpose of re-defining the term "sale" as it applied to an offer or agreement to sell.

The 2020 revision was for the purpose of providing for the defense of lawful possession or sale pursuant to Public Health Law § 3381. See text to footnote six.

<sup>2</sup> See Penal Law § 10.00 (8). An expanded definition of possession, including constructive possession, may be found in the section on instructions of General Applicability.

objective or purpose is to sell.] <sup>3</sup>

A person KNOWINGLY possesses [or sells] a hypodermic syringe [or hypodermic needle] when that person is aware that he or she is in possession of [or selling] a hypodermic syringe [or hypodermic needle]. <sup>4</sup>

A person UNLAWFULLY possesses [or sells] a hypodermic syringe [or hypodermic needle] when that person has no legal right to possess [or sell] it.<sup>5</sup>

Select appropriate alternative:

Under our law, with certain exceptions not applicable here, a person has no legal right to possess [or sell] a hypodermic syringe [or hypodermic needle].

Under our law, a person has no legal right to possess [or sell] a hypodermic syringe [or hypodermic needle] except: (specify the exception set forth in Public Health Law § 3381 that the defense has placed in issue).<sup>6</sup>

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:

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<sup>3</sup> See Penal Law § 220.00 (1); *People v. Samuels*, 99 NY2d 20 (2002).

<sup>4</sup> See Penal Law § 15.05 (2). An expanded definition of “knowingly” is available in the section on Instructions on General Applicability under Culpable Mental States.

<sup>5</sup> See Penal Law § 220.00 (2) and Public Health Law § 3396 (1).

<sup>6</sup> See Penal Law § 220.45; Pub. Health Law § 3381.

1. That on or about (date), in the County of (County), the defendant, (defendant's name), possessed [or sold] a hypodermic syringe [or hypodermic needle]; and
2. That the defendant did so knowingly and unlawfully; [and]
3. That the defendant did not lawfully possess [or sell] that hypodermic syringe [or hypodermic needle].

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

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