

**UNLAWFUL POSSESSION OF
MARIHUANA
(Violation)
PENAL LAW 221.05
(Committed on or after July 29, 1977)**

The _____ count is Unlawful Possession of Marihuana.

Under our law, a person is guilty of Unlawful Possession of Marihuana when that person knowingly and unlawfully possesses marihuana.

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.¹

A person KNOWINGLY possesses marihuana when that person is aware that he or she is in possession of marihuana.²

A person UNLAWFULLY possesses marihuana when that person has no legal right to possess it.³ Under our law, with certain exceptions not applicable here, a person has no legal right to possess marihuana.

In order for you to find the defendant guilty of this offense,

¹See 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.

²See Penal Law § 15.05(2).

³See Penal Law §§221.00 and 220.00(2), and Public Health Law § 3304 and § 3396(1).

the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

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

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the offense of Unlawful Possession of Marihuana as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the offense of Unlawful Possession of Marihuana as charged in the _____count.