**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE**

**IN THE FIFTH DEGREE**

**(Aggregate Weight Counts)**

**Penal Law § 220.06(2)
(One-Half [1/2] Ounce or More
Containing a Narcotic Preparation)
(Committed on or after June 10, 1995)**

**Penal Law § 220.06(8)
(28 grams or More Containing
Gamma Hydroxbutyric Acid)**

 **(Committed on or after November 1, 2003)**

The (*specify*) 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 one or more preparations, compounds, mixtures or substances containing

*Select the appropriate alternative:*

a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half [1/2] ounce or more.

gamma hydroxybutyric acid and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more. 2

The following terms used in that definition have a special meaning: 3

[The term NARCOTIC PREPARATION includes *(specify)*  .4]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.5

A person KNOWINGLY possesses a substance containing *(specify)*  when that person is aware that he or she is in possession of a substance containing  *(specify)*.6

A person UNLAWFULLY possesses  *(specify)*  when that

2 If in issue, the applicable definition of “gamma hydroxybutyric acid” is in Public Health Law §3306(I)(e)(4).

3 Where necessary, include the definition of “ounce” which means “an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids” (Penal Law § 220.00[3]).

4 *See* Penal Law § 220.00(8).

5 *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.

6 *See* Penal Law § 15.05(2); Penal Law § 15.20(4). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

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person has no legal right to possess it.7 Under our law, with certain exceptions not applicable here, a person has no legal right to possess  *(specify)*  .

AGGREGATE WEIGHT refers to the weight of the substance which contains the *(specify)*, irrespective of the amount of the  *(specify)*  actually in the substance.8

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 one or more preparations, compounds, mixtures or substances containing  *(specify)*  ;
2. That the defendant did so knowingly and unlawfully; and
3. That, in the aggregate, such substance 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.

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

8*See People v Mendoza*, 81 NY2d 963, 965 (1993).

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