**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE**

**IN THE THIRD DEGREE**

**(Pure Weight Counts)**

**Penal Law § 220.16(8)**

**(Five [5] Grams or More of a Stimulant)**

**(Committed on or after June 10, 1995)**

**Penal Law § 220.16(9)
  
(Five [5] Milligrams or More
  
of Lysergic Acid Diethylamide)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(10)
  
(One Hundred Twenty-Five [125] Milligrams
  
or More of a Hallucinogen)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(11)
  
(Five [5] Grams or More
  
of a Hallucinogenic Substance)
  
(Committed on or after June 10, 1995)**

**Penal Law § 220.16(13)
  
(One Thousand Two Hundred Fifty
  
[1,250] Milligrams or More
  
of Phencyclidine)
  
(Committed on or after June 10, 1995)**

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

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

*Select the appropriate alternative:*

a stimulant and the stimulant weighs five [5] grams or more.

lysergic acid diethylamide and the lysergic acid diethylamide weighs five [5] milligrams or more.

a hallucinogen and the hallucinogen weighs one hundred twenty-five [125] milligrams or more.

a hallucinogenic substance and the hallucinogenic substance weighs five [5] grams or more.

phencyclidine and the phencyclidine weighs one thousand two hundred fifty [1,250] milligrams or more.

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

[The term STIMULANT (*or* HALLUCINOGEN)

(*or* HALLUCINOGENIC SUBSTANCE) includes  *(specify)*  .1]

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

1*See* Penal Law §§ 220.00(11) (stimulant); 220.00(9) (hallucinogen); 220.00(10) (hallucinogenic substance).

2*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.

3*See* Penal Law § 15.05(2). 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.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)*  ;
2. That the defendant did so knowingly and unlawfully; and
3. That the *(specify)*  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.

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

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