**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE

IN THE FIRST DEGREE

(Eight [8] Ounces or More of a Narcotic Drug)

Penal Law § 220.21(1)

(Committed on or after Dec. 14, 2004)**

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

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the First Degree when that person knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of eight [8] ounces or more.

The following terms used in that definition have a special meaning:1

The term NARCOTIC DRUG includes  *(specify)*  .2

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.3

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)*.4

1Where 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).

2*See,* Penal Law § 220.00(7).

3*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.

4*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

A person UNLAWFULLY possesses  *(specify)*  when that person has no legal right to possess it.5 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.6

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 eight [8] ounces 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.

Mental States.

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

6*See, People v Mendoza*, 81 N.Y.2d 963, 965 (1993).

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