

**CRIMINAL POSSESSION OF CANNABIS**  
**[or CONCENTRATED CANNABIS]**  
**Penal Law §§ 222.30, 222.35, 222.40**  
**(Committed on or after March 31, 2021)**

The (*specify*) count is Criminal Possession of Cannabis in the (*specify*) degree.

Under our law, a person is guilty of Criminal Possession of Cannabis in the (*specify*) Degree when that person knowingly and unlawfully possesses (*Cannabis / Concentrated Cannabis*) and such (*Cannabis / Concentrated Cannabis*) weighs more than (*specify*).

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

[CANNABIS means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.<sup>1</sup>]

[CONCENTRATED CANNABIS means:

(a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

(b) a material, preparation, mixture, compound or other substance which contains more than three percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran

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<sup>1</sup> Penal Law § 222.00(1). Include definition or relevant parts as may be in issue.

numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system.<sup>2]</sup>

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

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of (specify).<sup>4</sup>

A person UNLAWFULLY possesses (Cannabis / Concentrated Cannabis) when that person has no legal right to possess it.<sup>5</sup> Under our law, with exceptions that are not here

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<sup>2</sup> Penal Law § 222.00(2). Include definition or relevant parts as may be in issue.

<sup>3</sup> Penal Law § 10.00(8). When constructive possession is in issue, insert the instruction in the section: General Applicability, Possession, Physical and Constructive.

<sup>4</sup> Penal Law § 15.05(2). If necessary, an expanded definition of the meaning of “knowingly” is available in the charges on General Applicability, Culpable Mental States, Knowingly.

<sup>5</sup> There is no statutory definition of “unlawfully.” There are statutes in Penal Law article 222 and in the Cannabis Law bearing on what is unlawful, as well as statutes bearing on what is lawful (and inferentially what would be unlawful). See Penal Law §§ 222.05 (Personal use of cannabis); 222.10 (Restrictions on cannabis use); and 222.15 (Personal cultivation and home possession of cannabis); Cannabis Law §§ 132 (Penalties for violation of this chapter); 134 ( Lawful actions pursuant to this chapter); and 137 (Persons forbidden to traffic cannabis).

If there is a claim that a statute makes the possession in a particular case lawful, the court must adjust the definition of “unlawfully” accordingly.

For example, Penal Law § 222.20 provides that: “In any prosecution for an offense involving cannabis under [Penal Law article 222] or an authorized local law, it is a defense that the defendant was engaged in such activity in compliance with the Cannabis Law.” That requires the defendant to place in issue the lawfulness of possession or sale provided for in the Cannabis Law.

With respect to claims that the possession is lawful under a Penal Law provision, decisional law appears to require the defendant to place it in issue as well. See *People v. Kohut*, 30 N.Y.2d 183 (1972) (when an exception to a criminal statute is in a section other than the section defining the offense, the exception constitutes a defense for the defendant to place in issue); *People v. Santana*, 7 N.Y.3d 234, 237 (2006) (the People were not required to negate the many alternatives encompassed in the statute’s exception clause that here operated as a proviso); *People v. Davis*, 13 N.Y.3d 17, 31 (2009) (the “main goal of the interpretative rules governing exceptions and provisos is to discover the intention of the enacting body,” and that intent may be determined by “common sense and reasonable pleading,” including whether the information contained in a statute’s exception “is uniquely within the defendant’s knowledge,” and whether requiring the People to plead and negate the existence of that information “would require them to go to ‘intolerable lengths’”).

applicable, a person has no legal right to possess (specify e.g. substance and weight charged).

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 (Cannabis / Concentrated Cannabis);
2. That the defendant did so knowingly and unlawfully;  
and
3. That the (Cannabis / Concentrated Cannabis) weighed (specify).

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

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.