**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
  
IN THE FIRST DEGREE
  
(Five Thousand Seven Hundred Sixty
  
[5,760] Milligrams of Methadone)
  
Penal Law § 220.21(2)
  
(Committed on or after June 10, 1995)**

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 methadone and said methadone weighs five thousand seven hundred sixty [5,760] milligrams or more.

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

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.1

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

A person UNLAWFULLY possesses methadone 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

1*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.

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

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

to possess methadone.

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 methadone;
2. That the defendant did so knowingly and unlawfully; and
3. That the methadone weighed five thousand seven hundred sixty [5,760] milligrams 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.

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