

**CRIMINALLY USING DRUG PARAPHERNALIA  
IN THE SECOND DEGREE  
(Material Suitable for Packaging)  
Penal Law § 220.50(2)  
(Committed on or after Nov. 1, 1990)  
(Revised April 4, 2003)<sup>1</sup>**

The (specify) count is Criminally Using Drug Paraphernalia in the Second Degree.

Under our law, a person is guilty of Criminally Using Drug Paraphernalia in the Second Degree when that person knowingly possesses [*or sells*] gelatine capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants under circumstances evincing an intent to use [*or under circumstances evincing knowledge that some person intends to use*] the same for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant.

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.<sup>2</sup>

[SELL means to sell, exchange, give or dispose of to another.

(Sell also includes an offer or agreement to sell even if actual delivery does not occur, provided that, at the time of the offer or agreement, the person has the intent and ability to make the sale. An intent is a conscious objective or purpose. Thus, a

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<sup>1</sup> The revision was for the purpose of re-defining the term “sale” as it applied to an offer or agreement to sell.

<sup>2</sup>See Penal Law § 10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the “Additional Charges” section at the end of this article.

person acts with intent to sell when that person's conscious objective or purpose is to sell.)]<sup>3</sup>

The term NARCOTIC DRUG includes (specify)

.4 The term STIMULANT includes (specify) .5

A person KNOWINGLY possesses [or sells] gelatine capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants, when that person is aware that he or she is in possession of [or selling] such material. <sup>6</sup>

INTENT means conscious objective or purpose.<sup>7</sup> Thus, a person would have the intent to use gelatine capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant if that person's conscious objective or purpose was to use that material for that purpose.

A person UNLAWFULLY manufactures, packages or dispenses a narcotic drug or stimulant when that person has no legal right to do so.<sup>8</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to manufacture, package or dispense any narcotic drug or stimulant.

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<sup>3</sup> See Penal Law § 220.00(1); *People v. Samuels*, 99 N.Y.2d 20 (2002).

<sup>4</sup> See Penal Law § 220.00(7).

<sup>5</sup> See Penal Law § 220.00(11).

<sup>6</sup> See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

<sup>7</sup> See Penal Law § 15.05(1).

<sup>8</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).

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 [or sold] gelatine capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants;
2. That the defendant did so knowingly; and
3. That the defendant did so under circumstances evincing an intent to use [or under circumstances evincing knowledge that some person intended to use] that material for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant.

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.