

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
IN THE FOURTH DEGREE**

**Penal Law § 220.09(10)
(One [1] Ounce or More
Containing Concentrated Cannabis)
(Committed on or after November 1, 1998)**

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

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Fourth Degree when that person knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing:

concentrated cannabis and the preparations, compounds, mixtures or substances are of an aggregate weight of one [1] ounce or more.

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

POSSESS means to have physical possession or otherwise

¹ Where 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]).

³ See Penal Law § 220.00(7)(narcotic drug); Penal Law § 220.00(8)(narcotic preparation).

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

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

⁴ 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.

⁵See Penal Law § 15.05(2); Penal Law § 15.20(4). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

⁶See Penal Law § 220.00(2) and Public Health Law § 3396(1).

⁷See *People v Mendoza*, 81 NY2d 963, 965 (1993).

3. That, in the aggregate, the substance 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.