

**CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
FOURTH DEGREE
(C Felony)**

**PENAL LAW 220.09(1)
(One-Eighth Ounce or More
of a Narcotic Drug)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.09(2)
(One-Half Ounce or More
of Methamphetamine)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.09(3)
(Two Ounces or More
of a Narcotic Preparation)
(Committed on or after Sept. 1, 1979)**

**PENAL LAW 220.09(10)
(One Ounce or More
of Concentrated Cannabis)
(Committed on or after Sept. 1, 1979)**

The _____ 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 of an aggregate weight of one-eighth ounce or more containing a narcotic drug [*or* one-half ounce or more containing methamphetamine, its salts, isomers, or salts of isomers] [*or* two ounces or more containing a narcotic preparation] [*or* one ounce or more containing concentrated cannabis].

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: [“narcotic drug”], [“narcotic preparation”], “possess,” “knowingly,” “unlawfully,” and “aggregate weight.”¹

[The term NARCOTIC DRUG (*or* NARCOTIC PREPARATION) includes (specify).²]

POSSESS means to have physical possession or otherwise to exercise dominion or control over

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]).

If in issue, a definition of “concentrated cannabis” is found in Public Health Law § 3302(5).

See, Penal Law § 220.00(7).

tangible property.³

A person KNOWINGLY possesses (specify) or more of a substance containing (specify) when that person is aware that he or she is in possession of that substance in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains (specify) and that, in the aggregate, the substance weighs (specify) or more.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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed a substance which, in the aggregate, weighed (specify) ounce[s] or more and which contained (specify); and
2. That the defendant did so knowingly and unlawfully.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Controlled Substance in the Fourth Degree as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Controlled Substance in the Fourth Degree as charged in the ___ count.

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 as found in the “Additional Charges” section at the end of this chapter.

See, Penal Law § 15.05(2) and *People v Ryan*, 82 NY2d 497 (1993).

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

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