

**CRIMINAL POSSESSION OF A WEAPON
IN THE FOURTH DEGREE
(Possession of Weapons
Other Than Knives & Firearms)
PENAL LAW 265.01 (1)
(Committed on or after as follows:**

September 1, 1974 [ch 1041] for: cane sword; billy; blackjack; bludgeon; metal knuckles; chuka stick; sandbag; sandclub; slungshot.

September 1, 1976 [ch 217] for: electric dart gun

September 1, 1982 [ch 840] for: shirken or "Kung Fu star"

September 1, 1983 [ch 621] for: wrist-brace type slungshot

November 1, 1990 [ch 264] for: electric stun gun

November 1, 2008 [ch 257] for: plastic knuckles)

(Revised Dec. 2022)¹

The (specify) count is Criminal Possession of a Weapon in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Fourth Degree when that person knowingly² possesses any

Select appropriate alternative:

electronic dart gun

electronic stun gun

cane sword

billy

blackjack

bludgeon

¹ The December 2022 revision was for the purpose of revising the definition of "knowingly" to accord with the cases cited in footnote (12).

² The word "knowingly" has been added to this definition to comport with statutory law (see Penal Law § § 15.00(2) and 15.05 [2]) and with case law. *People v Persce*, 204 NY 397, 402 (1912) ("the possession [of a slungshot] which is meant is a knowing and voluntary one"); *People v Saunders*, 85 NY2d 339, 341-42 (1995) ("Possession,' as part of the forbidden act, includes the Penal Law definitional component of '[v]oluntary act,' which incorporates the attribute of awareness of the possession or control Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon"); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

plastic knuckles
metal knuckles
chuka stick
sand bag
sandclub
wrist-brace type slingshot or slungshot
shirken
Kung Fu star

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

Select appropriate weapon to define:

An ELECTRONIC DART GUN means any device designed primarily as a weapon, the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electrical shock to such person by means of a dart or projectile.³

An ELECTRONIC STUN GUN means any device designed primarily as a weapon, the purpose of which is to stun, cause mental disorientation, knock out or paralyze a person by passing a high voltage electrical shock to such person.⁴

A CANE SWORD means a cane or swagger stick having concealed within it a blade that may be used as a sword or stiletto.⁵

A BILLY means a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes. A billy may be of fixed length, or collapsible or extendable or made of any type of material.⁶

² Penal Law § 265.00 (15-a).

³ Penal Law § 265.00 (15-c).

⁴ Penal Law § 265.00 (13).

⁵ See *People v Ocasio*, 28 NY3d 178 (2016).

METAL KNUCKLES means a metal object with multiple holes, through which an individual places his or her fingers so that a metal bar rests atop the individual's knuckles.⁷

A CHUKA STICK means any device designed primarily as a weapon, consisting of two or more lengths of a rigid material joined together by a thong, rope or chain in such a manner as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict serious injury upon a person by striking or choking. These devices are also known as nunchakus and centrifugal force sticks.⁸

A SLUNGSHOT is a striking weapon consisting of a small mass of metal or stone fixed on a flexible handle or strap.⁹

A KUNG FU STAR means a disc-like object with sharpened points on the circumference thereof and is designed for use primarily as a weapon to be thrown.¹⁰

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹¹

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of an object that is (specify). That person need not know (that is, be aware of) the object's name or that it meets the legal definition of

⁶ See *People v Aragon*, 28 NY3d 125, 128 (2016).

⁷ Penal Law § 265.00 (14).

⁹ *People v Abdullah*, 206 AD3d 1340 [3d Dept 2022]

¹⁰ Penal Law § 265.00 (15-b).

¹¹ 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.

(specify).¹²

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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 (specify); and
2. That the defendant did so knowingly;

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

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

¹² See Penal Law § 15.05 (2); *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (when possession of a gravity knife was a crime, defendants were required to know that “they possessed a knife” but the People were not required “to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife”); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) (“Contrary to defendant’s contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make ‘the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition’ Accordingly, the People did not have to prove that defendant was aware of the statutory definition of a blackjack”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“The People were not required to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

If necessary, an expanded definition of “knowingly” is available in the section on Instructions of General Applicability under Culpable Mental States.