

**CRIMINAL POSSESSION OF A WEAPON
IN THE SECOND DEGREE
(Machine-Gun or Disguised Gun
With Intent To Use Unlawfully)
Penal Law § 265.03(1)(a) and (1)(c)
(Committed on or after Nov. 1, 1998¹)
(Revised Dec 2022 & Dec 2023)²**

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

Under our law, a person is guilty of Criminal Possession of a Weapon in the Second Degree when, with intent to use the same unlawfully against another, that person knowingly³ possesses a

Select appropriate alternative:
machine-gun.
disguised gun.

¹ For crimes committed on or after September 1, 1974, and before Nov. 1, 1998, the statute applied only to the possession of a loaded firearm or machine gun with intent to use the same unlawfully against another. By the laws of 2005, c. 764, and the laws of 2006, c. 742 and c. 745, these provisions were renumbered without substantive change.

² The December 2022 revision was for the purpose of revising the definition of “knowingly” and its accompanying footnote.

The December 2023 revision was for the purpose of adding the Note that follows the definition of the crime.

³ 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).

NOTE: Penal Law § 30.00(2) specifies that a “juvenile offender” (14 or 15 years of age) “is criminally responsible for acts constituting. . . section 265.03 of [the Penal Law], where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in [Penal Law § 200.00(14)].”⁴ In turn, CPL 190.71 authorizes a Grand Jury to indict the “juvenile offender” for a violation of Penal Law § 265.03 for the possession of a machine gun or firearm on school grounds. In accord therefore with those statutes, as held in *People v Raul A.*, 215 AD3d 500 (1st Dept 2023), when a “juvenile offender” is indicted for possession of a machine gun or firearm in violation of Penal Law § 265.03: [1] the words “and the possession took place on school grounds” must be included in the indictment; [2] those words must be added to the definition of the crime set forth in this instruction; [3] the applicable part of the definition of “school grounds” (set forth in footnote) must be added in the definition section of this instruction; and [4] the element of possession on school grounds must be added to the list of elements the People must prove beyond a reasonable doubt.

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

[MACHINE-GUN means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.⁵]

[DISGUISED GUN means any weapon or device capable of being concealed on the person from which a shot can be

⁴ "School grounds" means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants. Penal Law § 220.00(14).

⁵ See Penal Law § 265.00(1).

discharged through the energy of an explosive and is designed and intended to appear to be something other than a gun.^{6]}

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁷

A person KNOWINGLY possesses a (*specify*) when that person is aware that he or she is in possession of an object that is a (*specify*). That person need not know (that is, be aware of) the object's name or whether it meets the definition of a (*specify*).⁸

INTENT means conscious objective or purpose.⁹ Thus, a person acts with intent to use a [machine-gun] [disguised gun] unlawfully against another when his or her conscious objective or purpose is to do so.¹⁰

⁶ See Penal Law § 265.00(20).

⁷ 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.

⁸ See Penal Law § 15.05(2). See *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 (continued) 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).

⁹ See Penal Law § 15.05(1).

¹⁰ Where the People rely on a statutory presumption of intent, insert the appropriate

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 (specify number) elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name) possessed a [machine-gun] [disguised gun];
2. That the defendant did so knowingly; [and];
3. That the defendant possessed the [machine-gun] [disguised gun] with the intent to use it unlawfully against another [and];
4. That the defendant possessed the machine-gun on school grounds.

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.

instruction from the "Additional Charges" section at the end of this article.