

**TRANSPORT OF WEAPONS AND
DANGEROUS INSTRUMENTS AND APPLIANCES¹**

**Penal Law § 265.10(2) (sentence 1)
(Committed on or after May 30, 2019)**

(Revised Dec 2022)²

The (*specify*) count is Transport of Weapons and Dangerous Instruments and Appliances.

Under our law, a person is guilty of the Transport of Weapons and Dangerous Instruments and Appliances when that person knowingly³ transports or ships:

Select appropriate alternative(s):

any machine-gun,
any firearm silencer,
any assault weapon,
any large capacity ammunition feeding device,
any disguised gun, or
as merchandise, five or more firearms.

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

¹ The statutory title, "Manufacture, Transport, Disposition and Defacement of Weapons and Dangerous Instruments and Appliances" has been modified to reflect the crime set forth in this jury instruction.

² The December 2022 revision was [1] for the purpose of incorporating a statutory change in the definition of "large capacity ammunition feeding device" per the L. 2022, ch. 209, effective July 6, 2022.

³ **Error! Main Document Only.** 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).

A person KNOWINGLY transports or ships a (specify) when that person is aware that he or she is doing so.⁴

Select appropriate definition(s):

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

FIREARM SILENCER means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.⁶

ASSAULT WEAPON means (specify appropriate portion of the definition in Penal Law § 265.00[22]). The “assault weapon” need not be loaded but it must be operable. To be operable, an “assault weapon” must be capable of discharging ammunition.⁷

LARGE CAPACITY AMMUNITION FEEDING DEVICE a magazine, belt, drum, feed strip, or similar device, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.⁸

⁴ Penal Law § 15.05(2).

⁵ Penal Law § 265.00(1)

⁶ Penal Law § 265.00(2)

⁷ **Error! Main Document Only.** See *People v. Longshore*, 86 NY2d 851, 852 [1995]. There is, however, no requirement that the possessor know the firearm was operable. *People v. Ansare*, 96 AD2d 96 (4th Dept. 1983). Cf. *People v. Saunders*, 85 NY2d 339, 341-42 (1995).

⁸ See Penal Law § 265.00(23), as amended by L. 2022, ch. 209, effective July 6, 2022. As may be appropriate to include, the statutory definition of “large capacity feeding device” continues: “provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years

DISGUISED GUN means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and is designed and intended to appear to be something other than a gun.⁹

A FIREARM means any pistol or revolver.³ The firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition.¹⁰

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 two elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), transported or shipped:

Select appropriate alternative(s):

any machine-gun,
any firearm silencer,
any assault weapon,
any large capacity ammunition feeding device,
any disguised gun, or
as merchandise, five or more firearms; and

2. That the defendant did so knowingly.

prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to subdivision sixteen-a of section 400.00 of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions of section 400.03 of this chapter including the check required to be conducted pursuant to such section.”

⁹ Penal Law § 265.00(20)

¹⁰ See note 7.

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.