

**POSSESSION OF GAMBLING RECORDS
SECOND DEGREE
(A Misdemeanor)
PENAL LAW §225.15(2)
(Committed on or after September 1, 1967)**

The _____ Count is Possession of Gambling Records in the Second Degree.

Under our law, a person is guilty of Possession of Gambling Records in the Second Degree when, with knowledge of the contents or nature thereof, that person possesses any writing, paper, instrument or article of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise.

Some of the terms used in the definition have their own special meaning in our law. I will now give you the meaning of the following terms: "possess," "lottery," and "policy."¹

"POSSESS" means to have physical possession or otherwise to exercise dominion or control over tangible property.²

¹ Depending on the facts and issues of the case, the terms, Gambling, Something of Value, and Contest of Chance, as defined in Penal Law § 225.00, may have to be explained as follows:

A person engages in GAMBLING when that person stakes or risks "something of value" upon the outcome of a "contest of chance" or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome. Penal Law § 225.00(2).

SOMETHING OF VALUE means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. Penal Law § 225.00(6).

CONTEST OF CHANCE means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. Penal Law § 225.00(1).

² 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 in CJI2d for the Penal Law article 220 charges.

Under our law, proof of possession of any gambling record is presumptive evidence of possession thereof with knowledge of its character or contents.³ What this means is that, if the People have proven beyond a reasonable doubt that the defendant was in possession of a gambling record, you may, but you are not required to, infer that the defendant had knowledge of its character or contents.

“LOTTERY” means an unlawful gambling scheme in which (a) the players⁴ pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value.⁵

“Unlawful” means not specifically authorized by law.⁶ Under our law, with certain exceptions not applicable here, a lottery is not authorized by law.

“POLICY” means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future event or events otherwise unrelated to the particular scheme.⁷

³ Penal Law §225.35(1).

⁴ Penal Law §225.00(3).

⁵ Penal Law § 225.00(10). The definition continues with the following provision: "provided, however, that in no event shall the provisions of this subdivision be construed to include a raffle as such term is defined in subdivision three-b of section one hundred eighty-six of the general municipal law."

⁶ Penal Law § 225.00(12).

⁷ Penal Law § 225.00(11).

[Note: Add if appropriate:

It is a defense to this charge if the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented plays, bets or chances of the defendant himself/herself in a number not exceeding ten.^{8]}

[Note: Add if appropriate:

It is a defense to this charge that the writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in the operation, promotion or playing of a lottery or policy scheme or enterprise.^{9]}

[Note: Add if appropriate:

It is not a defense to this charge that the lottery itself was drawn or conducted outside the state of New York and is not violative of the laws of the jurisdiction in which it was so drawn or conducted.]^{10]}

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 [each] of the following two [three][four] elements”

1. That on or about (*date*) in the county of (*county*), the defendant (*defendant's name*) possessed a writing, paper, instrument or article of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise;
2. That the defendant possessed the writing, paper, instrument or article with knowledge of its contents or nature;

⁸ Penal Law §225.15(2).

⁹ Penal Law §225.25.

¹⁰ Penal Law §225.40.

[Note: Add if appropriate:

3. That the writing, paper, instrument or article possessed by the defendant did not constitute, reflect, or represent plays, bets or chances of the defendant himself/herself, or if they did, they did not exceed ten in number.

and/or

4. That the writing, paper, instrument or article possessed was used or intended to be used in the operation, promotion or playing of a lottery or policy scheme or enterprise].

Therefore, if you find that the People have proven beyond a reasonable doubt both [each] of the elements, you must find the defendant guilty of the crime of Criminal Possession of Gambling Records in the Second 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 [any one or more] of those elements, you must find the defendant not guilty of the crime of Possession of Gambling Records in the Second Degree as charged in the _____ Count.