

**POSSESSION OF A GAMBLING DEVICE**  
**(A Misdemeanor)**  
**(Coin Operated Gambling Device)**  
**PENAL LAW § 225.30(a)(3)**

The \_\_\_\_\_ count is Possession of a Gambling Device.

Under our law, a person is guilty of Possession of a Gambling Device when, with knowledge of the character thereof, he or she manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of a coin operated gambling device, with intent to use such device in the advancement of unlawful gambling activity.

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: “possess,” “gambling device,” “unlawful,” “advance gambling activity,” and “intent.”

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>1</sup>

Under our law, proof of possession of any gambling device is presumptive evidence of possession thereof with knowledge of its character or contents.<sup>2</sup> What this means is that, if the People have proven beyond a reasonable doubt that the defendant was in possession of a gambling device, you may, but you are not required to, infer that the defendant had knowledge of its character or contents.

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<sup>1</sup>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.

<sup>2</sup>Penal Law § 225.35 (1).

**GAMBLING DEVICE** means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether such activity consists of gambling between persons or gambling by a person involving the playing of a machine. Notwithstanding the foregoing, lottery tickets, policy slips and other items used in the playing phases of lottery<sup>3</sup> and policy<sup>4</sup> schemes are not gambling devices.<sup>5</sup>

**UNLAWFUL** means not specifically authorized by law.<sup>6</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to engage in gambling activity.

A person **ADVANCES GAMBLING ACTIVITY** when, acting other than a player<sup>7</sup>, that person engages in conduct which

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<sup>3</sup>See Penal Law § 225.00 (10) for definition of “lottery.”

<sup>4</sup>See Penal Law § 225.00 (11) for definition of “policy.”

<sup>5</sup>Penal Law § 225.00 (7)

<sup>6</sup>Penal Law § 225.00 (12)

<sup>7</sup>See Penal Law § 225.00 (3) for definition of “player.”

materially aids any form of gambling activity.<sup>8</sup>

*[Note: add if appropriate:*

Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation.]

*[Note: Add if appropriate:*

One advances gambling activity when, having substantial proprietary or other authoritative control over premises being used with his or her knowledge for purposes of gambling activity, he or she permits such to occur or continue or

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<sup>8</sup>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).

makes no effort to prevent its occurrence or continuation.]<sup>9</sup>

“Intent” means conscious objective or purpose.<sup>10</sup> Thus, a person acts with intent to use a coin operated gambling device in the advancement of unlawful gambling activity when that person’s conscious objective or purpose is to do so.

[Note: If applicable, add appropriate presumption(s):

Under our law, possession of three or more coin operated gambling devices constitutes presumptive evidence that the defendant intended to use the coin operated gambling devices in the advancement of unlawful gambling activity. This means that you may, but you are not required to, infer from the introduction of this evidence by the People of such intention.<sup>11</sup>

Under our law, possession of a coin operated gambling device in a public place constitutes presumptive evidence that the defendant intended to use the coin operated gambling device in the advancement of unlawful gambling activity. This means that you may, but you are not required to, infer from the introduction of this evidence by the People of such intention.<sup>12</sup>

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, each of the following three elements:

1. That on or about (*date*) in the county of (*county*) the defendant (*defendant’s name*), manufactured, sold, transported, placed or possessed, or conducted or

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<sup>9</sup>Penal Law § 225.00 (4)

<sup>10</sup>See Penal Law § 15.05 (1)

<sup>11</sup>See Penal Law § 225.35 (3)

<sup>12</sup>See Penal Law § 225.35 (3)

negotiated any transaction affecting or designed to affect ownership, custody or use of a coin operated gambling device;

2. That the defendant did so with knowledge of the character of such coin operated gambling device; and
3. That the defendant did so with intent to use the gambling device in the advancement of unlawful gaming activity.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Possession of a Gambling Device as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or all of those elements, you must find the defendant not guilty of the crime of Possession of a Gambling Device as charged in the \_\_\_\_\_ count.