

**CRIMINAL POSSESSION
OF A WEAPON
FOURTH DEGREE
(A Misdemeanor)
PENAL LAW 265.01(2)
(Possession With Intent
to Use Unlawfully)
(Committed on or after Nov. 1, 1988)**

The _____ 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 knowingly¹ possesses a dagger [or dangerous knife] [or dirk] [or razor] [or stiletto] [or imitation pistol] [or (other) dangerous or deadly instrument or weapon]

with intent to use the same unlawfully against another.

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," "knowingly" and "intent."

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

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of such

¹The word "knowingly" has been added to this definition to comport with statutory law (Penal Law § 15.05(2)) and with case law. *People v. Ford*, 66 NY2d 428, 440 (1985); *People v. Marino*, 212 AD2d 735, 736 (2d Dept. 1995); *People v. Cohen*, 57 AD2d 790 (1st Dept. 1977).

²See 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 chapter.

(specify).³

INTENT means conscious objective or purpose.⁴ Thus, a person acts with intent to use a *(specify)* unlawfully against another when his or her conscious objective or purpose is to use it unlawfully against another.⁵

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 three elements:

1. That on or about *(date)*, in the county of *(county)*, the defendant, *(defendant's name)* possessed a *(specify)*;
2. That the defendant did so knowingly; and
3. That the defendant did so with intent to use *(specify)* unlawfully against another.

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 Criminal Possession of a Weapon in the Fourth Degree 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 more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Weapon in the Fourth Degree as charged in the _____ count.

³See Penal Law § 15.05(2).

⁴See Penal Law § 15.05(1).

⁵If the People rely on the statutory presumption of intent, insert the appropriate instruction from the "Additional Charges" section at the end of this chapter.