

**CRIMINAL POSSESSION OF A WEAPON
THIRD DEGREE
(D Felony)
(Possession of Bomb, Silencer, Etc.)
PENAL LAW 265.02(2)
(Committed on or after Sept. 1, 1974)**

The ____ count is Criminal Possession of a Weapon in the Third Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Third Degree when that person knowingly¹ possesses any explosive or incendiary bomb [or bombshell] [or firearm silencer] [or any firearm or weapon simulating a machine-gun and which is adaptable for such use].

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 term[s]: ["firearm silencer",] "possess", and "knowingly."

[A FIREARM SILENCER means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm.²]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.³

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 § 265.00(2).

³See 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.

A person KNOWINGLY possesses (*specify*) when that person is aware that he or she is in possession of such (*specify*).⁴

In order for you to find the defendant guilty of this crime, the People are required to prove, beyond a reasonable doubt, from all the evidence in the case, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed (specify); and
2. That the defendant did so knowingly.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Weapon in the Third 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 of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Weapon in the Third Degree as charged in the _____ count.

⁴See Penal Law § 15.05(2).