

POSSESSION OF BURGLAR'S TOOLS
Penal Law § 140.35
(Committed on or after Sept. 1, 1967)

The (*specify*) count is Possession of Burglar's Tools.

Under our law, a person is guilty of Possession of Burglar's Tools when that person possesses any tool, instrument or other article adapted, designed or commonly used for committing or facilitating offenses involving forcible entry into premises [*or* offenses involving larceny by a physical taking] [*or* offenses involving theft of services] under circumstances evincing an intent to use [*or* knowledge that some person intends to use] the same in the commission of an offense of such character.

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

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

INTENT means conscious objective or purpose.² Thus, a person has the intent to use a tool, instrument or other article in the commission of an offense involving forcible entry into premises [*or* an offense involving larceny by a physical taking] [*or* an offense involving theft of services] when that person's conscious objective or purpose is to do so.

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

² See Penal Law § 10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the "Additional Charges" section at the end of this chapter.

³ See Penal Law §15.05(1).

defendant, (defendant's name), possessed a (specify);

2. That the (specify) is a tool, instrument or article adapted, designed or commonly used for committing or facilitating offenses involving forcible entry into premises [*or* offenses involving larceny by a physical taking] [*or* offenses involving theft of services]; and
3. That the defendant possessed that (specify) under circumstances evincing his/her intent to use it [*or* his/her knowledge that some person intended to use it] in the commission of an offense involving forcible entry into premises [*or* an offense involving larceny by a physical taking] [*or* an offense involving theft of services].

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.