

**CRIMINAL POSSESSION OF A WEAPON  
FOURTH DEGREE  
Penal Law § 265.01 (2)  
(Possession With Intent to Use)  
(Committed on or after Nov. 1, 1988;  
except Aug. 19, 2016 for “machete”)  
(Revised Jan. 2017)<sup>1</sup>**

The (specify) 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 knowingly<sup>2</sup> possesses

Select appropriate weapon:

a dagger

dangerous knife<sup>3</sup>

dirk

machete<sup>4</sup>

razor

stiletto

imitation pistol

(other) dangerous or deadly instrument or weapon,

with intent to use the same unlawfully against another.

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<sup>1</sup> In January 2017, the charge was revised to add “machete” to the list of weapons pursuant to L 2015, ch 269.

<sup>2</sup> The word "knowingly" has been added to this definition to comport with statutory law (see Penal Law § 15.05 [2]) and with case law (see *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]).

<sup>3</sup> See *Matter of Antwaine T.*, 23 NY3d 512 (2014); *Matter of Jaime D.*, 59 NY2d 589 (1983).

<sup>4</sup> Added and effective August 19, 2016 by L 2015, ch 269.

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.<sup>5</sup>

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of such (specify).<sup>6</sup>

INTENT means conscious objective or purpose.<sup>7</sup> 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.<sup>8</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) 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.

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<sup>5</sup> See 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 the article 265 charges.

<sup>6</sup> See Penal Law § 15.05 (2).

<sup>7</sup> See Penal Law § 15.05 (1).

<sup>8</sup> If the People rely on the statutory presumption of intent, insert the appropriate instruction from the "Additional Charges" section at the end of the article 265 charges.

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.  
count.