

POSSESSION OF GRAFFITI INSTRUMENTS
Penal Law § 145.65
(Committed on or after Nov. 1, 1992)

The (*specify*) count is Possession of Graffiti Instruments.

Under our law, a person is guilty of Possession of Graffiti Instruments when that person possesses any tool [*or instrument*] [*or article*] [*or substance*] [*or solution*] [*or compound*] designed or commonly used to etch, paint, cover, draw upon or otherwise place a mark upon a piece of property which that person has no permission or authority to etch, paint, cover, draw upon or otherwise mark, under circumstances evincing an intent to use the same in order to damage such property.

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 a conscious objective or purpose. Thus, a person intends to use a tool [*or instrument*] [*or article*] [*or substance*] [*or solution*] [*or compound*] to damage property when that person's conscious objective or purpose is to use that tool [*or instrument*] [*or article*] [*or substance*] [*or solution*] [*or compound*] to damage property.²

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, both of the following two elements:

¹ Penal Law § 10.00(8). If necessary, an expanded definition of "possession" is available in the section on Instructions of General Applicability under Possession.

² See Penal Law § 15.05(1). If necessary, an expanded definition of "intent" is available in the section on Instructions of General Applicability under Culpable Mental States.

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed a tool [or instrument] [or article] [or substance] [or solution] [or compound] designed or commonly used to etch, paint, cover, draw upon, or otherwise place a mark upon a piece of property; and
2. That defendant possessed such tool [or instrument] [or article] [or substance] [or solution] [or compound] under circumstances evincing an intent to use the same in order to damage property without permission or authority to do so.

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

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