

**CRIMINAL POSSESSION  
OF STOLEN PROPERTY  
FOURTH DEGREE  
(E Felony)  
(Motor Vehicle; Value Exceeds  
One Hundred Dollars [\$100])  
PENAL LAW 165.45(5)  
(Committed on or after Nov. 1, 1986)**

The \_\_\_\_\_ count is Criminal Possession of Stolen Property in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of Stolen Property in the Fourth Degree when that person knowingly possesses stolen property, with intent to benefit himself or herself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds one hundred dollars [\$100] and the property consists of a motor vehicle.

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:<sup>1</sup> "knowingly," "possess," "property," "stolen property," "intent," "owner," and "value."

A person KNOWINGLY possesses stolen property when that person is aware that he or she is in possession of property and is aware that such property is stolen.<sup>2</sup>

*[NOTE: If the defendant is a collateral loan broker or dealer in property, add the appropriate presumption from the "Additional Charges" section of this Article.]*

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<sup>1</sup>Penal Law § 165.45(5) provides that the property must be a motor vehicle as defined in VTL § 125, "other than a motorcycle" as defined in VTL § 123. If the definition of motor vehicle is in issue, it should be charged.

<sup>2</sup>See Penal Law § 15.05(2).

POSSESS means to have physical possession or otherwise to exercise dominion and control over tangible property.<sup>3</sup>

PROPERTY means any money, personal property or thing of value.<sup>4</sup>

STOLEN PROPERTY is property that has been wrongfully taken, obtained, or withheld from an owner by a person who did so with the intent to deprive another of such property or to appropriate such property to himself or herself or a third person.<sup>5</sup>

INTENT means conscious objective or purpose.<sup>6</sup> Thus, a person acts with intent to benefit himself or herself or a person other than an owner of property or to impede the recovery of property by an owner when that person's conscious objective or purpose is to do so.

Under our law, a person who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or herself or a person other than an owner thereof or to impede its recovery by an owner thereof.<sup>7</sup> This means that, if the People have proven beyond a reasonable doubt that the defendant knowingly possessed stolen property, you may, but you are not required to, infer from that fact that the defendant possessed it with the intent to benefit himself/herself or a person other than an owner thereof or to impede its recovery by an owner thereof.

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<sup>3</sup>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 article.

<sup>4</sup>See Penal Law § 155.00(1), for the full definition of "property." If the property in issue is "computer data" or a "computer program," and those terms need to be defined for the jury, see Penal Law § 156.00(2) and (3).

<sup>5</sup>See Penal Law § 155.05(1).

<sup>6</sup>See Penal Law § 15.05(1).

<sup>7</sup>See Penal Law § 165.55(1).

An OWNER means a person having a right to possession of the property superior to that of the person who possesses it.<sup>8</sup>

VALUE means the market value of the property at the time and place the defendant is alleged to have possessed it [or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time thereafter].<sup>9</sup>

*[NOTE: Add if appropriate:*

It is not a defense to this charge:

*(Select appropriate alternative[s]:*

that the person who stole the property has not been convicted, apprehended, or identified.<sup>10</sup>

*and/or*

that the defendant stole or participated in the theft of the property.<sup>11</sup>

*and/or*

that the theft of the property did not occur within this state.)]<sup>12</sup>

In order for you to find the defendant guilty of this crime, the

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<sup>8</sup>See Penal Law § 155.00(5), which has been modified for this crime. Also see that section for special definitions of “owner” to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

<sup>9</sup>See Penal Law § 155.20(1); *People v. Corbett*, 129 AD2d 433 (1st Dept. 1987); *People v. Oakley*, 95 AD2d 944 (3d Dept. 1983). For methods of establishing the value of items which do not have a readily ascertainable market value, see Penal Law § 155.20(2), (3) and (4).

<sup>10</sup>See Penal Law § 165.60(1).

<sup>11</sup>See Penal Law § 165.60(2).

<sup>12</sup>See Penal Law § 165.60(3).

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), knowingly possessed stolen property;
2. That the defendant did so with the intent to benefit himself/herself or a person other than an owner of such property or to impede the recovery of such property by an owner; and
3. That the stolen property consisted of a motor vehicle with a value which exceeded one hundred dollars [\$100].

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 Stolen Property 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 Stolen Property in the Fourth Degree as charged in the \_\_\_\_\_ count.

*[NOTE: If the corroboration requirement of Penal Law § 165.65 applies, a corroboration charge must be given.]*