

**POSSESSION OF GAMBLING RECORDS
IN THE FIRST DEGREE
Penal Law § 225.20(1)
(Committed on or after September 1, 1976)**

The (*specify*) count is Possession of Gambling Records in the First Degree.

Under our law, a person is guilty of Possession of Gambling Records in the First Degree when, with knowledge of the contents thereof, he or she possesses any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than five thousand dollars.

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

Under our law, proof of possession of any gambling record is presumptive evidence of possession thereof with knowledge of its character or contents.² What this means is that, if the People have proven beyond a reasonable doubt that the defendant was in possession of a gambling record, you may, but you are not required to, infer that the defendant had knowledge of its character or contents. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.³

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

²Penal Law §225.35(1).

³ In 2019, the last sentence was added to conform to the instruction for presumptions in other sections.

“BOOKMAKING” means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.⁴

The terms “advancing gambling activity” and “unlawfully” used in the definition of "bookmaking" also have their own special meanings.

A person “advances gambling activity” when, acting other than as a player⁵, that person engages in conduct which materially aids any form of gambling activity.⁶

[Note: add if appropriate:

Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. ^{7]}

⁴ Penal Law §225.00(9).

⁵ See Penal Law § 225.00(3) for definition of “player.”

⁶ Depending on the facts and issues of the case, the terms, Gambling, Something of Value, and Contest of Chance, as defined in Penal Law § 225.00, may have to be explained as follows:

A person engages in GAMBLING when that person stakes or risks "something of value" upon the outcome of a "contest of chance" or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome. Penal Law § 225.00(2).

SOMETHING OF VALUE means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. Penal Law § 225.00(6).

CONTEST OF CHANCE means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. Penal Law § 225.00(1).

[Note: Add if appropriate:

One advances gambling activity when, having substantial proprietary or other authoritative control over premises being used with his or her knowledge for purposes of gambling activity, he or she permits such to occur or continue or makes no effort to prevent its occurrence or continuation. ^{7]}

“UNLAWFULLY” means not specifically authorized by law.⁸ Under our law, with certain exceptions not applicable here, accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events is not authorized by law.

[NOTE: Add if appropriate:

It is a defense to this charge that the writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise.]⁹

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 [four] elements:

1. That on or about (*date*) in the county of (*county*), the defendant (*defendant's name*) possessed a writing, paper, instrument or article of a kind commonly used in the operation, promotion of bookmaking scheme or enterprise;
2. That the writing, paper, instrument or article constituted, reflected or represented more than five bets

⁷ Penal Law §225.00(4).

⁸ Penal Law §225.00(12).

⁹ Penal Law §225.25.

totaling more than five thousand dollars;

3. That the defendant possessed the writing, paper, instrument or article with knowledge of its contents;

[Note: Add if the statutory defenses apply:

4. That the writing, paper, instrument or article possessed was used or intended to be used in the operation or promotion of a bookmaking scheme or enterprise.]

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.