

**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 on or after Aug. 19, 2016 for “machete”)
(Revised Jan. 2017)¹**

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 knowingly² possesses a/an

Select appropriate weapon:
dagger
dangerous knife³

¹ In January 2017, the charge was revised to add “machete” to the list of weapons pursuant to Laws of 2015, ch 269.

² 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]).

³ In *Matter of Antwaine T.*, 23 NY3d 512, 516 (2014), the Court addressed the meaning of “dangerous knife” as it appears in Penal Law § 265.05, and stated:

The statute does not define the term “dangerous knife.” In *Matter of Jamie D.* (59 NY2d 589 [1983]), however, this Court held that the term, as used in the statute, “connotes a knife which may be characterized as a weapon” (*id.* at 592). We explained that certain knives may fall within the scope of the statute based solely on the knife’s particular characteristics. For instance, “a bayonet, a stiletto, or a dagger” would come within the meaning of “dangerous knife” because those instruments are “primarily intended for use as a weapon” (*id.* at 592-593).

We also explained that other knives, which are designed and primarily intended for use as “utilitarian utensils,” may also come within the statutory language in at least two ways (*id.* at 593). First, a knife may be converted into a weapon, and second, “the circumstances of its possession, although there has been no modification of the implement, may permit a finding that on the occasion of its possession it was essentially a weapon rather than a utensil” (*id.* at 593).

dirk
machete⁴
razor
stiletto
imitation pistol
(other) dangerous or deadly instrument or weapon,

with intent to use the same unlawfully against another.

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

If applicable:

DEADLY WEAPON means:

Select appropriate alternative:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

⁴ Added and effective August 19, 2016 by L 2015, ch 269. In Matter of *Antwaine T.* at 516-17 the Court addressed the meaning of “machete.”

A “machete” is generally defined as “a large, heavy knife that is used for cutting plants and as a weapon” (Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/machete>). While a machete has utilitarian purposes, under the circumstances of this case, it would be unreasonable *517 to infer from the statement supporting the petition that respondent was using the machete for cutting plants. Rather, the arresting officer's description of the “machete,” with its 14-inch blade, being carried by respondent late at night on a street in Brooklyn, adequately states “circumstances of . . . possession” (*Jamie D.* at 593) that support the charge that defendant was carrying a weapon.

a switchblade knife, defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

a pilum ballistic knife, defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.

a metal knuckle knife, defined as a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

metal knuckles, defined as a metal object with multiple holes, through which individual places his or her fingers so that a metal bar rests atop the individual's knuckles.

a billy, defined as a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes.

a dagger

a blackjack

plastic knuckles. ⁵

⁵ Penal Law § 10.00(12) defines "deadly weapon." See Penal Law § 265.00 for the definitions of "switchblade knife," "pilum ballistic knife" and "metal knuckle knife"; *People v. Aragon*, 28 N.Y.3d 125 (2016) (for the definition of "metal knuckles"); *People v. Ocasio*, 28 N.Y.3d 178 (2016) (for the definition of "billy").

There is no controlling statutory or decisional law definition of "plastic knuckles" albeit the legislative memorandum in support of adding that term equated it with "brass [metal] knuckles"; thus, for the definition of "plastic knuckles," a court may wish to consider using the definition of "metal knuckles," substituting "plastic object" for "metal object" and "plastic bar" for "metal bar."

If applicable:

[DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,⁶ that is, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁷ Under that definition, death or other serious physical injury need not, in fact, be caused.]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁸

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of such (specify).⁹

INTENT means conscious objective or purpose.¹⁰ Thus, a person acts with intent to use a (specify) unlawfully against another when his or her conscious objective or purpose is to do so.¹¹

⁶ Penal Law § 10.00(13).

⁷ Penal Law § 10.00(10).

⁸ 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.

⁹ See Penal Law § 15.05 (2).

¹⁰ See Penal Law § 15.05 (1).

¹¹ 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.

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.

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.