

**CRIMINAL POSSESSION OF A WEAPON  
IN THE FOURTH DEGREE  
(Possession of Armor Piercing Ammunition)  
Penal Law § 265.01(8)  
(Committed on or after Nov. 1, 1988)**

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>1</sup> possesses any armor piercing ammunition with intent to use the same unlawfully against another.

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

**ARMOR PIERCING AMMUNITION** means any ammunition capable of being used in pistols or revolvers containing a projectile or projectile core for use in such ammunition, that is constructed entirely, excluding the presence of traces of other substances, from one or a combination of any of the following: tungsten alloys, steel, iron, brass, bronze, beryllium, copper, or uranium.<sup>2</sup>

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

A person **KNOWINGLY** possesses armor piercing ammunition when that person is aware that he or she is in

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<sup>1</sup>The word "knowingly" has been added to this definition to comport with statutory law (Penal Law § 15.05(2)) and with case law. *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>2</sup>See Penal Law § 265.00(18).

<sup>3</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 this chapter.

possession of such armor piercing ammunition.<sup>4</sup>

INTENT means conscious objective or purpose.<sup>5</sup> Thus, a person acts with intent to use armor piercing ammunition unlawfully against another when his or her conscious objective or purpose is to use it unlawfully against another.<sup>6</sup>

In order for you to find the defendant guilty of this crime, the 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), possessed armor piercing ammunition;
2. That the defendant did so knowingly; and
3. That the defendant did so with the intent to use the armor piercing ammunition 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.

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<sup>4</sup> See Penal Law § 15.05(2).

<sup>5</sup>See Penal Law § 15.05(1).

<sup>6</sup> If the People rely on the statutory presumption of intent, insert the appropriate instruction from the "Additional Charges" section at the end of this chapter.