

**CRIMINAL POSSESSION OF A WEAPON
IN THE FOURTH DEGREE
(Possession of Weapons
Other Than Knives & Firearms)
PENAL LAW 265.01 (1)
(Committed on or after as follows:**

September 1, 1974 [ch 1041] for: cane sword; billy; blackjack; bludgeon; metal knuckles; chuka stick; sandbag; sandclub; slungshot.

September 1, 1976 [ch 217] for: electric dart gun

September 1, 1982 [ch 840] for: shirken or “Kung Fu star”

September 1, 1983 [ch 621] for: wrist-brace type slingshot

November 1, 1990 [ch 264] for: electric stun gun

November 1, 2008 [ch 257] for: plastic knuckles.

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 knowingly¹ possesses any

Select appropriate alternative:

electronic dart gun
electronic stun gun
cane sword
billy
blackjack
bludgeon
plastic knuckles
metal knuckles
chuka stick

¹ 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 Parrilla*, 27 NY3d 400, 404 (2016); *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).

sand bag
sandclub
wrist-brace type slingshot or slungshot
shirken
Kung Fu star

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

Select appropriate weapon to define:

An ELECTRONIC DART GUN means any device designed primarily as a weapon, the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electrical shock to such person by means of a dart or projectile.²

An ELECTRONIC STUN GUN means any device designed primarily as a weapon, the purpose of which is to stun, cause mental disorientation, knock out or paralyze a person by passing a high voltage electrical shock to such person.³

A CANE SWORD means a cane or swagger stick having concealed within it a blade that may be used as a sword or stiletto.⁴

A BILLY means 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 billy may be of fixed length, or collapsible or extendable or made of any type of material.⁵

METAL KNUCKLES means a metal object with multiple holes, through which an individual places his or her fingers so that

² Penal Law § 265.00 (15-a).

³ Penal Law § 265.00 (15-c).

⁴ Penal Law § 265.00 (13).

⁵ See *People v Ocasio*, 28 NY3d 178 (2016).

a metal bar rests atop the individual's knuckles.⁶

A CHUKA STICK means any device designed primarily as a weapon, consisting of two or more lengths of a rigid material joined together by a thong, rope or chain in such a manner as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict serious injury upon a person by striking or choking. These devices are also known as nunchakus and centrifugal force sticks.⁷

A KUNG FU STAR means a disc-like object with sharpened points on the circumference thereof and is designed for use primarily as a weapon to be thrown.⁸

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁹

A person KNOWINGLY possesses (specify weapon) when that person is aware that he or she is in possession of (specify weapon).¹⁰

Note: In People v Parrilla, 27 NY3d 400 (2016), the Court held that a defendant charged with (the since repealed) prohibition on possession of a gravity knife was required to know that he or she was in possession of a knife; not that the knife met the law's definition of a gravity knife. Whether and to what extent the rationale of that case applies to any other weapon has not been decided and is left to the learned discretion of the trial judge. With respect to the electronic stun gun, compare People v Small, 157 Misc 2d 673 (Sup Ct, New York County 1993) with People v Voltaire, 18 Misc 3d 408, 413 n. 1 (Crim Ct, Kings County 2007).

⁶ See *People v Aragon*, 28 NY3d 125, 128 (2016).

⁷ Penal Law § 265.00 (14).

⁸ Penal Law § 265.00 (15-b).

⁹ 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.

¹⁰ Penal Law § 15.05 (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. That on or about (date), in the County of (County), the defendant, (defendant's name), possessed (specify); and
2. That the defendant knowingly possessed (specify).

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