

**CRIMINAL POSSESSION OF A WEAPON  
IN THE THIRD DEGREE  
(Possession of Disguised Gun)  
Penal Law § 265.02(6)  
(Committed on or after November 1, 2021)<sup>1</sup>  
(Revised May 2022)<sup>2</sup>**

The (specify) count is Criminal Possession of a Weapon in the Third Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Third Degree when that person knowingly<sup>3</sup> possesses any disguised gun.

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

DISGUISED GUN means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and is designed and intended to appear to be either: (a) something other than a gun; or (b) a toy gun that shall include, but not be limited to, any firearm, rifle, shotgun or machine-gun displaying a color finish

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<sup>1</sup> The 2021 revision was for the purpose of amending the definition of “disguised gun” to add paragraph (b) in accord with the L. 2021, c. 518, effective Nov. 1, 2021. The paragraph (a) portion of the statute, without the words: “either: (a)” was in effect from Nov, 1, 2020 until Nov 1, 2021 and this charge may accordingly be used for that offense allegedly committed during that period, with the omission of the words “either: (a)” and paragraph (b).

<sup>2</sup> See footnote (1).

<sup>3</sup> The word "knowingly" has been added to this definition to comport with statutory law (see Penal Law § § 15.00(2) and 15.05 [2]) and with case law. *People v Persce*, 204 NY 397, 402 (1912) ("the possession [of a slungshot] which is meant is a knowing and voluntary one"); *People v Saunders*, 85 NY2d 339, 341-42 (1995) ("Possession,' as part of the forbidden act, includes the Penal Law definitional component of '[v]oluntary act,' which incorporates the attribute of awareness of the possession or control . . . . Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon"); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

other than the original manufacture color, a decorative pattern or plastic like surface.<sup>4</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>5</sup>

A person KNOWINGLY possesses a disguised gun when that person is aware that he or she is in possession of such a disguised gun.<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, both of the following two elements:

1. That on or about (date) , in the county of (county) , the defendant, (defendant's name) possessed a disguised gun;
2. That the defendant did so knowingly.

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.

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<sup>4</sup> The definition continues with the following proviso: "provided, however, that any rifle or shotgun displaying a camouflage color finish or pattern that is intended for hunting, as defined by article eleven of the environmental conservation law, shall not be considered a "disguised gun" for purposes of this section." When in issue, the proviso and the definition in the environmental conservation law must be added. Penal Law § 265.00(20).

<sup>5</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 article.

<sup>6</sup> See Penal Law § 15.05(2).