

**CRIMINAL POSSESSION OF A WEAPON
IN THE THIRD DEGREE
(Possession of Disguised Gun)
Penal Law § 265.02(6)
(Committed on or after November 1, 2000)**

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 knowingly¹ 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 something other than a gun.²

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.³

A person KNOWINGLY possesses a disguised gun when that person is aware that he or she is in possession of such a

¹ 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).

² See Penal Law § 265.00(20).

³ 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.

disguised gun.⁴

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.

⁴See Penal Law § 15.05(2).