

**TRANSPORT OF WEAPONS AND  
DANGEROUS INSTRUMENTS AND APPLIANCES<sup>1</sup>**

**Penal Law § 265.10(2) (sentence 1)**

(Committed on or after May 30, 2019)

The (specify) count is Transport of Weapons and Dangerous Instruments and Appliances.

Under our law, a person is guilty of the Transport of Weapons and Dangerous Instruments and Appliances when that person knowingly<sup>2</sup> transports or ships:

Select appropriate alternative(s):

any machine-gun,  
any firearm silencer,  
any assault weapon,  
any large capacity ammunition feeding device,  
any disguised gun, or  
as merchandise, five or more firearms.

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

A person KNOWINGLY transports or ships a (specify) when that person is aware that he or she is doing so.<sup>3</sup>

Select appropriate definition(s):

MACHINE-GUN means a weapon of any description, irrespective of size, by whatever name known, loaded or

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<sup>1</sup> The statutory title, "Manufacture, Transport, Disposition and Defacement of Weapons and Dangerous Instruments and Appliances" has been modified to reflect the crime set forth in this jury instruction.

<sup>2</sup> **Error! Main Document Only.** 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>3</sup> Penal Law § 15.05(2).

unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.<sup>4</sup>

FIREARM SILENCER means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.<sup>5</sup>

ASSAULT WEAPON means (*specify appropriate portion of the definition in Penal Law § 265.00[22]*). The “assault weapon” need not be loaded but it must be operable. To be operable, an “assault weapon” must be capable of discharging ammunition.<sup>6</sup>

LARGE CAPACITY AMMUNITION FEEDING DEVICE means a magazine, belt, drum, feed strip, or similar device, [manufactured after September 13, 1994<sup>7</sup>], that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.<sup>8</sup>

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<sup>4</sup> Penal Law § 265.00(1)

<sup>5</sup> Penal Law § 265.00(2)

<sup>6</sup> **Error! Main Document Only.** See *People v. Longshore*, 86 NY2d 851, 852 [1995]. There is, however, no requirement that the possessor know the firearm was operable. *People v. Ansare*, 96 AD2d 96 (4th Dept. 1983). Cf. *People v. Saunders*, 85 NY2d 339, 341-42 (1995).

<sup>7</sup> Effective January 15, 2013, the requirement that the device be “manufactured after September 13, 1994 was repealed. L.2013, c. 1, as amended by L.2013, c. 57].

<sup>8</sup> See Penal Law § 265.00(23). As may be appropriate to include, the statutory definition of “large capacity feeding device” continues: “provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to subdivision sixteen-a of section 400.00 of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions of section 400.03 of this chapter including the check required to be conducted pursuant to such section.”

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.<sup>9</sup>

A FIREARM means any pistol or revolver.<sup>3</sup> The firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition<sup>10</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 two elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), transported or shipped:

Select appropriate alternative(s):

any machine-gun,  
any firearm silencer,  
any assault weapon,  
any large capacity ammunition feeding device,  
any disguised gun, or  
as merchandise, five or more firearms; and

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.

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<sup>9</sup> Penal Law § 265.00(20)

<sup>10</sup> See note 7.

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.