

**PRESUMPTION OF POSSESSION  
FROM PRESENCE OF WEAPON IN AUTOMOBILE  
Penal Law § 265.15 (3)**

Under our law, the presence in an automobile [other than a stolen one or a public omnibus<sup>1</sup>], of:

*Select appropriate alternative:*

any firearm  
large capacity ammunition feeding device<sup>2</sup>  
defaced firearm  
defaced rifle or shotgun<sup>3</sup>  
defaced large capacity ammunition feeding device<sup>4</sup>  
firearm silencer  
explosive or incendiary<sup>5</sup> bomb  
bombshell  
gravity knife  
switchblade knife  
pistol ballistic knife<sup>6</sup>  
metal knuckle knife<sup>7</sup>  
dagger  
dirk  
stiletto  
billy  
blackjack  
plastic knuckles<sup>8</sup>  
metal knuckles  
chuka stick<sup>9</sup>  
sandbag  
sandclub  
slungshot

is presumptive evidence of its possession by all persons occupying such automobile at the time such weapon [or instrument] [or appliance] is found

[NOTE: Add any exception(s) in issue:

except if such weapon [or instrument] [or appliance] is found upon the person of one of the occupants therein<sup>10</sup>

*and/or* except if such weapon [or instrument] [or appliance] is found in an automobile which is being operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his trade, then such presumption shall not apply to the driver<sup>11</sup>

*and/or* except if the weapon so found is a pistol or revolver and one of the occupants, not present under duress, has in his or her possession a valid license to have and carry concealed the same.<sup>12]</sup>

What this means is that, if the People have proven beyond a reasonable doubt that the (specify weapon) was present in an automobile [other than a stolen one or a public omnibus] and that the defendant was occupying such automobile at the time such (specify) was found

[NOTE: Add any exception(s) in issue:

and that the (specify) was not found upon the person of one of the occupants therein

*and/or* and that the (specify) was not found in an automobile which was being operated for hire by the defendant, as a duly licensed driver in the due, lawful and proper pursuit of his trade

*and/or* and that none of the occupants, except for any occupant present under duress, had in his or her possession a valid license to have and carry concealed the (specify),

then you may, but you are not required to, infer from those facts

that the defendant possessed the (specify). Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.<sup>13</sup>

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<sup>1</sup> Read the bracketed material only if an issue exists as to whether the automobile is stolen or is a public omnibus.

<sup>2</sup> Added by the L 2000, ch 189, § 14, effective November 1, 2000, and thus as to crimes involving “large capacity ammunition feeding device,” committed on or after Nov. 1, 2000.

<sup>3</sup> Added by the L 1987, ch 695, § 3.

<sup>4</sup> Added by the L 2000, ch 189, § 14, effective November 1, 2000, and thus as to crimes involving “defaced large capacity ammunition feeding device,” committed on or after November 1, 2000.

<sup>5</sup> “Explosive or incendiary” was added as predicate to “bomb” by the L 1970, ch 1012, § 2.

<sup>6</sup> Added by the L 1986, ch 328, § 5.

<sup>7</sup> Added by the L 1995, ch 219, § 5.

<sup>8</sup> Added by the L 2008, ch 257, § 6, effective November 1, 2008, and thus as to crimes involving “plastic knuckles,” committed on or after November 1, 2008.

<sup>9</sup> Added by the L 1974, ch 179, § 4.

<sup>10</sup> See Penal Law § 265.15 (3) (a).

<sup>11</sup> See Penal Law § 265.15 (3) (b).

<sup>12</sup> See Penal Law § 265.15 (3) (c).

13. In 2019, the last sentence was added to conform to the instruction for presumptions in other sections.