

**CRIMINAL POSSESSION OF A WEAPON
IN THE FOURTH DEGREE
Penal Law § 265.01 (2)
(Possession with Intent to Use)
(Committed on or after Nov. 1, 1988; except:
Aug. 19, 2016, for “machete”;
Nov. 1, 2019, for “undetectable knife”)
(Revised Jan. 2017; Dec. 2022)¹**

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 knowingly² possesses any

Select appropriate weapon:

dagger
dangerous knife
dirk
machete
razor
stiletto
imitation pistol

¹ The January 2017 revision for the purpose of adding “machete” to the list of weapons per L. of 2015, ch 269.

The December 2022 revision for the purpose of adding “undetectable knife” to the list of weapons per L. 2019, ch 146.

² 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).

undetectable knife
(other) dangerous or deadly instrument or weapon,

with intent to use the same unlawfully against another.

The following terms used in that definition have a special meaning: ³

If applicable:

DEADLY WEAPON means:

³ There is no Penal Law definition of dagger, dangerous knife, dirk, machete, razor, stiletto, or imitation pistol.

In *Matter of Antwaine T.*, 23 NY3d 512, 516-17 (2014), the Court addressed the meaning of “dangerous knife,” and “machete”:

The statute [Penal Law § 265.05] does not define the term “**dangerous knife.**” In *Matter of Jamie D.* (59 NY2d 589 [1983]), however, this Court held that the term, as used in the statute, “connotes a knife which may be characterized as a weapon” (*id.* at 592). We explained that certain knives may fall within the scope of the statute based solely on the knife’s particular characteristics. For instance, “a bayonet, a stiletto, or a dagger” would come within the meaning of “dangerous knife” because those instruments are “primarily intended for use as a weapon” (*id.* at 592-593).

We also explained that other knives, which are designed and primarily intended for use as “utilitarian utensils,” may also come within the statutory language in at least two ways (*id.* at 593). First, a knife may be converted into a weapon, and second, “the circumstances of its possession, although there has been no modification of the implement, may permit a finding that on the occasion of its possession it was essentially a weapon rather than a utensil” (*id.* at 593).

A “**machete**” is generally defined as “a large, heavy knife that is used for cutting plants and as a weapon” (Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/machete>). While a machete has utilitarian purposes, under the circumstances of this case, it would be unreasonable to infer from the statement supporting the petition that respondent was using the machete for cutting plants. Rather, the arresting officer’s description of the “machete,” with its 14-inch blade, being carried by respondent late at night on a street in Brooklyn, adequately states “circumstances of . . . possession” (*Jamie D.* at 593) that support the charge that defendant was carrying a weapon.

Select appropriate alternative:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

a switchblade knife, defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

a pilum ballistic knife, defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.

a metal knuckle knife, defined as a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

metal knuckles, defined as a metal object with multiple holes, through which individual places his or her fingers so that a metal bar rests atop the individual's knuckles.

a billy, defined as 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 dagger

a blackjack

plastic knuckles.⁴

⁴ Penal Law § 10.00(12) defines "deadly weapon." See Penal Law § 265.00 for the definitions of "switchblade knife," "pilum ballistic knife" and "metal knuckle knife"; *People v. Aragon*, 28 N.Y.3d 125 (2016) (for the definition of "metal knuckles"); *People v. Ocasio*, 28 N.Y.3d 178 (2016) (for the definition of "billy").

[UNDETECTABLE KNIFE means any knife or other instrument, which does not utilize materials that are detectable by a metal detector or magnetometer when set at a standard calibration, that is capable of ready use as a stabbing or cutting weapon and was commercially manufactured to be used as a weapon.^{5]}

DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,⁶ that is, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁷ Under that definition, death or other serious physical injury need not, in fact, be caused.]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁸

A person KNOWINGLY possesses (*specify*) when that person is aware that he or she is in possession of an object that

There is no controlling statutory or decisional law definition of "plastic knuckles" albeit the legislative memorandum in support of adding that term equated it with "brass [metal] knuckles"; thus, for the definition of "plastic knuckles," a court may wish to consider using the definition of "metal knuckles," substituting "plastic object" for "metal object" and "plastic bar" for "metal bar."

⁵ Penal Law § 265.00(5-d)

⁶ Penal Law § 10.00(13).

⁷ Penal Law § 10.00(10).

⁸ 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 the article 265 charges.

is (*specify*).⁹ That person need not know (that is, be aware of) the object's name or that it meets the definition of (*specify*).¹⁰

INTENT means conscious objective or purpose.¹¹ Thus, a person acts with intent to use a (*specify*) unlawfully against another when his or her conscious objective or purpose is to do so.¹²

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, each of the following three elements:

⁹ See Penal Law § 15.05 (2). If necessary, an expanded definition of knowingly is available in the section on Instructions of General Applicability under Culpable Mental States.

¹⁰ See *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (when possession of a gravity knife was a crime, defendants were required to know that “they possessed a knife” but the People were not required “to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife”); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) (“Contrary to defendant’s contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make ‘the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition’ Accordingly, the People did not have to prove that defendant was aware of the statutory definition of a blackjack”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“The People were not required to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

¹¹ See Penal Law § 15.05 (1).

¹² If the People rely on the statutory presumption of intent, insert the appropriate instruction from the “Additional Charges” section at the end of the article 265 charges.

1. That on or about (date), in the county of (County), the defendant, (defendant's name) possessed a (specify);
2. That the defendant did so knowingly; and
3. That the defendant did so with intent to use (specify) unlawfully against another.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.
count.