

**CRIMINAL POSSESSION OF A WEAPON  
SECOND DEGREE  
(C Felony)  
(Machine-Gun or Disguised Gun  
With Intent To Use Unlawfully)  
PENAL LAW 265.03(1)(a) and (1)(c)  
(Committed on or after Nov. 1, 1998<sup>1</sup>)**

The \_\_\_\_ count is Criminal Possession of a Weapon in the Second Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Second Degree when, with intent to use the same unlawfully against another, that person knowingly<sup>2</sup> possesses a

*Select appropriate alternative:*

machine-gun.  
disguised gun.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: ["machine-gun"] ["disguised gun"] "possess," "knowingly," and "intent".

[MACHINE-GUN means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or

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<sup>1</sup> For crimes committed on or after September 1, 1974 to Nov. 1, 1998, the statute applied only to the possession of a loaded firearm or machine gun with intent to use the same unlawfully against another. By the laws of 2005, c. 764, and the laws of 2006, c. 742 and c. 745, these provisions were renumbered without substantive change.

<sup>2</sup> 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).

automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.<sup>3]</sup>

[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>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 [machine-gun] [disguised gun] when that person is aware that he or she is in possession of such [machine-gun] [disguised gun].<sup>6</sup>

INTENT means conscious objective or purpose.<sup>7</sup> Thus, a person acts with intent to use a [machine-gun] [disguised gun] unlawfully against another when his or her conscious objective or purpose is to do so.<sup>8</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 three elements:

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<sup>3</sup> See Penal Law § 265.00(1).

<sup>4</sup> See 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).

<sup>7</sup> See Penal Law § 15.05(1).

<sup>8</sup> Where the People rely on a statutory presumption of intent, insert the appropriate instruction from the "Additional Charges" section at the end of this article.

1. That on or about (date), in the county of (county), the defendant, (defendant's name) possessed a [machine-gun] [disguised gun];
2. That the defendant did so knowingly; and
3. That the defendant possessed the [machine-gun] [disguised gun] with the intent to use it unlawfully against another.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Weapon in the Second Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Weapon the Second Degree as charged in the \_\_\_\_\_ count.