

**CRIMINAL POSSESSION OF A WEAPON
IN THE FOURTH DEGREE
(Possession of Per Se Knives)
Penal Law § 265.01 (1)
(Committed on or after:**

**September 1, 1967 [L 1965, ch 1030] for: "Switchblade knife."
November 1, 1986 [L 1986, ch 328] for: "Pilum ballistic knife."
November 1, 1995 [L 1995, ch 219] for: "Metal knuckle knife"; except
that the words "plastic knuckles or" in the definition of this knife was
added by the Laws of 2008, chapter 257, § 6, effective November 1,
2008.)**

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 knowingly¹

possesses any

Select appropriate alternative:

switchblade knife.
pilum ballistic knife.
metal knuckle knife.

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

¹ 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).

Select appropriate knife to define:

A SWITCHBLADE KNIFE means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.²

A PILUM BALLISTIC KNIFE means any knife which has 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.³

A METAL KNUCKLE KNIFE means 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 metal knuckles as well as a knife.⁴ [Metal knuckles means a metal object with multiple holes, through which an individual places his or her fingers so that a metal bar rests atop the individual's knuckles.]⁴

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁵

A person KNOWINGLY possesses a (specify name of applicable knife) when that person is aware that he or she is in possession of a knife. That person need not know, (that is, need not be aware), that the knife he or she possesses is a

² Penal Law § 265.00 (4).

³ Penal Law § 265.00 (5-a).

⁴ Penal Law § 265.00 (5-b). The words "plastic knuckles or" was added by the Laws of 2008, chapter 257, § 6, effective November 1, 2008. Someone with a fist." See *People v. Aragon*, 28 N.Y.3d 125, 128 (2016).

⁵ 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.

(specify name of applicable knife).⁶

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, the following three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), possessed a knife;
2. That the defendant knowingly possessed a knife; and
3. That the knife was a (specify name of applicable knife).

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.

⁶ See Penal Law § 15.05 (2). *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).