

**ANY OTHER WEAPON IN EDUCATIONAL INSTITUTION**  
**(N.J.S.A. 2C:39-5e(2))**<sup>1</sup>

Count \_\_\_\_\_ of the indictment charges defendant with possession of a weapon in an educational institution. **(Read count of indictment)**. The statute upon which this count of the indictment is based states in pertinent part:

Any person who knowingly has in his possession [any weapon under circumstances not manifestly appropriate for such lawful use as it may have] in or upon any part of the buildings or grounds of any school, college, university or other educational institution without the written authorization of the governing officer of the institution is guilty of a crime.

In order for you to find the defendant guilty of this charge, the State must prove each of the following elements beyond a reasonable doubt:

1. That [exhibit \_\_\_\_ is a weapon] [that there was a weapon];
2. That defendant knowingly possessed the weapon;
3. That defendant knowingly possessed the weapon under circumstances not manifestly appropriate for a lawful use; and
4. That defendant knowingly possessed the weapon in or upon any part of the buildings or grounds of any school, college, university or other educational institution without the written authorization of the governing officer of the institution.

The first element that the State must prove beyond a reasonable doubt is that [exhibit \_\_\_\_ is a weapon] [there was a weapon]. Weapon means anything readily capable of lethal use or of inflicting serious bodily injury.

The second element that the State must prove beyond a reasonable doubt is that defendant knowingly possessed the weapon. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain

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<sup>1</sup> This portion of N.J.S.A. 2C:39-5e(2) refers to weapons which may have a lawful purpose.

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that his/her conduct will cause such a result. “Knowing,” “with knowledge” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that a defendant stated, for example, that he/she acted with knowledge when he/she had control over a particular thing. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances.

The word “possess” means a knowing, intentional control of a designated thing, accompanied by a knowledge of its character. Thus, the person must know or be aware that he/she possesses the item (in this case a weapon), and he/she must know what it is that he/she possesses or controls, in other words, that it is a weapon.

This possession cannot merely be a passing control that is fleeting or uncertain in its nature. In other words, to “possess” within the meaning of the law, the defendant must knowingly procure or receive the item possessed or be aware of his/her control thereof for a sufficient period of time to have been able to relinquish his/her control if he/she chose to do so.

When we speak of possession, we mean a conscious, knowing possession, either actual or constructive.

**[CHOOSE APPROPRIATE]**

**ACTUAL POSSESSION**

A person is in actual possession of a particular article or thing when he/she knows what it is: that is, he/she has knowledge of its character and knowingly has it on his/her person at a given time. A person who, with knowledge of its character, knowingly has direct physical control over a thing, at a given time, is in actual possession of it.

**CONSTRUCTIVE POSSESSION**

Constructive possession means possession in which the possessor does not physically have the item on his/her person but is aware that the item is present and is able to and has the intention to

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exercise control over it. So, someone who has knowledge of the character of an item and knowingly has both the power and the intention at a given time to exercise control over it, either directly or through another person or persons, is then in constructive possession of that item.

**JOINT POSSESSION**

Possession may be sole or joint. If one person alone has actual or constructive possession of an item, possession is sole. If two or more persons share actual or constructive knowing possession of an item, possession is joint.

The third element that the State must prove beyond a reasonable doubt is that defendant possessed the weapon under circumstances not manifestly appropriate for such lawful uses as it may have. The State has the burden of proving beyond a reasonable doubt that the defendant's possession of the (name of weapon) was under circumstances not manifestly appropriate for such lawful uses as it may have. It is not necessary for the State to prove that defendant formed an intent to use that object as a weapon.<sup>2</sup>

It is, however, necessary for the State to prove that it was possessed under such circumstances that a reasonable person would recognize that it was likely to be used as a weapon; in other words, under circumstances where it posed a likely threat of harm to others. You may consider factors such as the surrounding circumstances; size, shape and condition of the object, the nature of its concealment, the time, place and actions of the defendant when it was found in his/her possession to determine whether or not the object was manifestly appropriate for its lawful use.

The fourth element that the State must prove beyond a reasonable doubt is that defendant knowingly possessed the firearm in or upon any part of the buildings or grounds of any [**choose appropriate**] [school] [college] [university] [other educational institution] without the written authorization of the governing officer of the institution. I have already defined knowingly for you.

If you find that the State has proven every element of the offense beyond a reasonable doubt, then you must find defendant guilty. If you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find defendant not guilty.

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<sup>2</sup> See Model Jury Charges, (Criminal), Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5d).