

CERTAIN WEAPONS IN EDUCATIONAL INSTITUTION
(N.J.S.A. 2C:39-5e(2))¹

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 **[choose appropriate]** a [gravity knife²] [switchblade knife³] [dagger] [dirk] [stiletto] [dangerous knives] [billy] [blackjack] [bludgeon] [metal knuckles] [sandclub] [slingshot] [cesti] [leather band studded with metal filings] [razor blades imbedded in wood] [stun gun⁴] [any weapon or device which projects, releases or emits tear gas or any other substances intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air] [firearm even though not loaded or lacking a clip or other component to render them immediately operable] [any components which can be readily assembled into a firearm] 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 (enumerate type of weapon)] [there was a (enumerate type of weapon)];
2. That defendant knowingly possessed the [enumerate type of weapon]; and
3. That defendant possessed the [enumerate type of weapon] and he/she knew the possession was occurring in or upon any part of the buildings or grounds of any school, college, university or other educational institution.
4. The defendant possessed the (enumerate weapon) in or upon any part of the buildings or grounds of any school, college, university or other educational

¹ This portion of N.J.S.A. 2C:39-5e(2) refers to specific weapons.

² Gravity knife means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force. N.J.S.A. 2C:39-1h.

³ Switchblade knife means any knife or similar device which has a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife. N.J.S.A. 2C:39-1p.

⁴ Stun gun means any weapon or other device which emits an electric charge or current intended to temporarily or permanently disable a person. N.J.S.A. 2C:39-1t.

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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 (enumerate type of weapon) [there was a enumerate type of weapon firearm]. A weapon includes **[choose appropriate]** a [gravity knife] [switchblade knife] [dagger] [dirk] [stiletto] [dangerous knives] [billy] [blackjack] [bludgeon] [metal knuckles] [sandclub] [slingshot] [cesti] [leather band studded with metal filings] [razor blades imbedded in wood] [stun gun] [any weapon or device which projects, releases or emits tear gas or any other substances intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air] [firearm even though not loaded or lacking a clip or other component to render them immediately operable] [any components which can be readily assembled into a firearm]. In this case the State alleges that defendant was in possession of (enumerate type of weapon).

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 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 [enumerate type of weapon]), and he/she must know what it is that he/she possesses or controls, in other words, that it is [enumerate type of weapon].

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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 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 (enumerate weapon) and that he/she knew such possession was occurring in or upon any part of the buildings or grounds of any **[choose appropriate]** [school] [college] [university] [other educational institution]. I have already defined knowingly for you.⁵

The fourth element that the State must prove beyond a reasonable doubt is that the defendant possessed the (enumerate weapon) in or upon any part of the buildings or grounds of

⁵ State v. Grate, 220 N.J. 317 (2015).

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any [**choose appropriate**] [school] [college] [university] [other educational institution] without the written authorization of the governing officer of the institution.

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.