

POSSESSION OF GAMBLING RECORDS - LOTTERY/POLICY
(N.J.S.A. 2C:37-3a(2))

Count _____ of the indictment charges defendant with the offense of possession of gambling records commonly used in the operation, promotion or playing of a [select as appropriate: lottery or policy] scheme or enterprise. In pertinent part, the indictment alleges that:

(Read material part of Count _____ to jury)

The statute that defendant is accused of violating states that: A [defendant] is guilty of possession of gambling records when, with knowledge of the contents thereof, he/she possesses any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a [lottery/policy] scheme or enterprise.

In order to convict defendant of this offense, the State must prove beyond a reasonable doubt each of the following elements:

1. That defendant knowingly possessed a particular writing, paper, instrument or article;¹
2. That [S- ___/the writing, paper, etc.] is of a kind commonly used in an unlawful [lottery/policy] scheme or enterprise; and
3. That defendant possessed [S- ___/the writing, paper, etc.] with knowledge of its contents.

The first element that the State must prove beyond a reasonable doubt is that defendant knowingly possessed [S- ___/a particular writing, paper, instrument or article]. A defendant acts "knowingly" with respect to the nature of his/her conduct or the attendant circumstances if defendant is aware that his/her conduct is of that nature, or that such circumstances exist, or defendant is aware of a high probability of their existence. A defendant acts knowingly with respect to his/her conduct if defendant is aware that it is practically certain that his/her conduct will cause such a result. The term "with knowledge" has the same meaning.²

¹ If the writing, paper, instrument or article in question has been admitted in evidence, refer to same by its exhibit number, e.g., S-24.

² N.J.S.A. 2C:2-2b(2).

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You should understand that 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 defendant stated, for example, that he/she acted with knowledge when he/she did 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 place where the acts occurred and all that was done or said by defendant preceding, connected with, and immediately succeeding the events in question are among the circumstances to be considered.

As used in the statute, the term possession means: **[Utilize model jury charge for actual/constructive/joint possession, as applicable]**

The second element that the State must prove beyond a reasonable doubt is that [S- /the writing, paper, etc.] is of a kind commonly used in a [lottery/policy] scheme or enterprise.

[CHARGE AS APPLICABLE: LOTTERY/POLICY]

As used in the statute, the term “lottery” means an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value.³ The term “unlawful” means not specifically authorized by law.⁴

As used in the statute, the term "policy" or "the numbers game" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the

³ N.J.S.A. 2C:37-1h.

⁴ N.J.S.A. 2C:37-1k.

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basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.⁵

The third element that the State must prove beyond a reasonable doubt is that defendant possessed [S- /the writing, paper, etc.] with knowledge of its contents. Regarding this third element, you must bear in mind that the requirement that defendant have knowledge the exhibit's/writing's contents is a requirement separate and distinct from that of the first element which requires that defendant's possession of the writing itself be knowing. In other words, conviction for possession of [lottery/policy] records requires that (1) defendant possess a writing knowingly and (2) that defendant know that the writing that he/she possesses is of a kind commonly used in a [lottery/policy] scheme or enterprise. In order to sustain its burden of proof, however, it is not necessary for the State to prove the existence of an actual particular [lottery/ policy] scheme or enterprise.

* * * * *

[STATUTORY DEFENSE – CHARGE AS APPLICABLE]

Defendant contends that he/she is not guilty of possession of [lottery/policy] records because [S- /the writing, paper, etc.] allegedly possessed by defendant constituted, reflected or represented plays or chances of defendant himself/herself in a number not exceeding ten. Under the statute, this is a defense to the charge of possession of [lottery/policy] records.⁶

Defendant must prove this defense by clear and convincing evidence. This is to be distinguished from the State's burden of proving defendant's guilt beyond a reasonable doubt. Clear and convincing evidence is that which produces in your mind a firm belief or conviction as to the truth of the fact sought to be established and is evidence so clear, direct, weighty and convincing as to enable you to come to a clear conviction, without hesitancy, of the truth of the matter in issue.⁷ Defendant need not prove that [S- /the writing/paper, etc.] represent

⁵ See N.J.S.A. 2C:37-1i.

⁶ See N.J.S.A. 2C:37-3b(1).

⁷ See In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 339 (App. Div. 1981), mod. o.g. and aff'd 90 N.J. 361 (1982), cert. den. sub nom. Perlman v. Attorney General of New Jersey, 459 U.S. 1081 (1982).

his/her personal plays or chances in a number not exceeding ten beyond a reasonable doubt, but rather, the evidence admitted in support of this defense should produce in your mind a firm belief that defendant's contention is true. In other words, the law does not require absolute certainty but reasonable certainty that it is true. If you find by clear and convincing evidence that [S-____/the writing, paper, etc.] represent defendant's personal plays or chances in a number not exceeding ten, he/she must be found not guilty of Count ____.

* * * * *

[STATUTORY DEFENSE – CHARGE AS APPLICABLE]

Defendant contends that he/she is not guilty because defendant did not use or intend to use [S-____/the writing, paper, instrument or article allegedly possessed by defendant] in the operation or promotion of a [lottery/policy] scheme or enterprise. Under the statute, this is a defense to the charge of possession of [lottery/policy] records.⁸ I have used the phrase "intend to use." Intending to do something means the purpose to do something, a resolution to do a particular act or accomplish a certain thing. Intent is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. If the defendant neither used nor intended to use [S-____/the writing, paper, instrument or article allegedly possessed by him/her] in the operation or promotion of a [lottery/policy] scheme or enterprise, this is a defense to the charge of possession of [lottery/policy] records. The defendant must prove this defense by clear and convincing evidence. **[Continue with instruction regarding clear and convincing as set forth above.]**

* * * * *

If the State has failed to prove beyond a reasonable doubt any of the elements of the offense, you must find defendant not guilty. But if you determine that the State has proved each of the elements of possession of [lottery/policy] records beyond a reasonable doubt, you must find defendant guilty of that offense.

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⁸ N.J.S.A. 2C:37-3b(2).

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If you conclude that defendant is guilty of possession of [lottery/policy] records, you must then determine whether the State has proved beyond a reasonable doubt that defendant possessed [lottery/policy] records that constitute, reflect or represent more than 100 plays or chances in a [lottery/policy] operation or scheme.⁹

YES _____

NO _____

⁹ Possession of lottery/policy records that constitute, reflect or represent over 100 plays or chances is a third degree offense. Otherwise, possession of lottery/policy records is a disorderly person's offense. See N.J.S.A. 2C:37-2c(2).