

## Criminal Possession of a Weapon

(Penal Law Article 265)



Group 8:  
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## Criminal Possession of a Weapon

- First, we will define common terms
- Second, we will break the following criminal possession of a weapon (CPW) offenses into elements:
  1. CPW in the Fourth Degree (Penal Law §265.01)
  2. CPW in the Third Degree (Penal Law §265.02)
  3. CPW in the Second Degree (Penal Law §265.03)
  4. CPW in the First Degree (Penal Law §265.04)

## CPW Common Definitions

- Definitions pertaining to the Act
  1. To possess
  2. To knowingly possess a weapon
  
- Definitions pertaining to the Object
  1. Types of weapons→ Rifle, Kung Fu Star, Metal knuckle Knife, Firearm, Pilum ballistic knife, Cane sword, Gravity knife, Chuka stick, Machine-gun, Deadly weapon, dangerous instrument, Electronic stun gun...
  
  2. Conditions of the weapons→ Loaded, Disguised, Operable, Defaced.

## CPW Common Definitions

- Definitions pertaining to the Act:
  1. To possess (Penal Law §10.00 [8]): To have physical possession or otherwise to exercise dominion or control over tangible property.
  
  2. To knowingly possess (Penal Law §15.05 [2]): When the person is aware that he or she is in physical possession.

## CPW Common Definitions

- Definitions pertaining to the Object:
  1. Machine gun (Penal Law §265.00 [1]): 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 automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.
  2. Firearm silencer (Penal Law §265.00 [2]): any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.

## CPW Common Definitions

3. Firearm (Penal Law §265.00 [3]):
  - Any pistol or revolver; or
  - A shotgun having one or more barrels less than eighteen inches in length; or
  - A rifle having one or more barrels less than sixteen inches in length; or
  - Any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches; or
  - An assault weapon.

## CPW Common Definitions

4. Operable firearm (Penal Law §265.00[3]) : firearm which is capable of discharging a munition.
5. Switchblade knife (Penal Law §265.00 [4]): 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.



## CPW Common Definitions

6. Gravity knife (Penal Law §265.00 [5]): 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 which, when released, is locked in place by means of a button, spring, lever or other device.
7. Pilum ballistic knife (Penal Law §265.00 [5] [a]): 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.



## CPW Common Definitions

8. Metal knuckle knife (Penal Law §265.00 [5] [b]): 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 plastic knuckles or metal knuckles as well as a knife.



9. Automatic knife (Penal Law §265.00 [5] [b]): includes a stiletto, a switchblade knife, a gravity knife, a cane sword, a pilum ballistic knife, and a metal knuckle knife.

## CPW Common Definitions

10. Deface (Penal Law §265.00 [7]): to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.
11. Rifle (Penal Law §265.00 [11]): a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

## CPW Common Definitions

12. Shotgun (Penal Law §265.00 [12]): a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

13. Cane Sword (Penal Law §265.00 [13]): a cane or swagger stick having concealed within it a blade that may be used as a sword or stiletto.



## CPW Common Definitions

14. Chuka stick (Penal Law §265.00 [14]): any device designed primarily as a weapon, consisting of two or more lengths of a rigid material joined together by a thong, rope or chain in such a manner as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict serious injury upon a person by striking or choking.



## CPW Common Definitions

15. Loaded firearm (Penal Law §265.00 [15]): any firearm loaded with ammunition or any firearm which is possessed by one who, at the same time, possesses a quantity of ammunition which may be used to discharge such firearm.

16. Electronic dart gun (Penal Law §265.00 [15] [a]): any device designed primarily as a weapon, whose purpose is to momentarily stun, knock out or paralyze a person by passing an electrical shock to such person by means of a dart or projectile.



## CPW Common Definitions

17. Kung Fu star (Penal Law §265.00 [15] [b]): a disc-like object with sharpened points on the circumference thereof and is designed for use primarily as a weapon to be thrown



18. Electronic stun gun (Penal Law §265.00 [15] [c]): any device designed primarily as a weapon, the purpose of which is to stun, cause mental disorientation, knock out or paralyze a person by passing a high voltage electrical shock to such person.

## CPW Common Definitions

19. Disguised firearm (Penal Law §265.00 [20]): 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.
20. Semiautomatic (Penal Law §265.00 [21]): any repeating rifle, shotgun or pistol, regardless of barrel or overall length, which utilizes a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge or shell.

## CPW Common Definitions

21. Assault weapon (Penal Law §265.00 [22]):
  - A semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the following characteristics: a folding or telescoping stock; a pistol grip that protrudes conspicuously beneath the action of the weapon; a thumbhole stock; a second handgrip or a protruding grip that can be held by the non-trigger hand; a bayonet mount; a flash suppressor, muzzle break, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle break, or muzzle compensator; a grenade launcher;



## CPW Common Definitions

- A semiautomatic shotgun that has at least one of the following characteristics: a folding or telescoping stock; a thumbhole stock; a second handgrip or a protruding grip that can be held by the non-trigger hand; a fixed magazine capacity in excess of seven rounds; an ability to accept a detachable magazine;
- A semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following characteristics: a folding or telescoping stock; a thumbhole stock; a second handgrip or a protruding grip that can be held by the non-trigger hand; capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip; a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

## CPW Common Definitions

- A revolving cylinder shotgun;
- A semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or weapon defined in subparagraph (v) of paragraph (e) of subdivision twenty-two of section 265.00 of this chapter as added by chapter one hundred eighty-nine of the laws of two thousand and otherwise lawfully possessed pursuant to such chapter of the laws of two thousand prior to September fourteenth, nineteen hundred ninety-four.

## CPW Common Definitions

22. Deadly weapon (Penal Law §10.00 [12]):
- Any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged; or
  - A switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles
23. Dangerous instrument (Penal Law §10.00 [13]): Any instrument, article or substance, including a “vehicle,” which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.

## The Basic Offense: CPW in the Fourth Degree

- Statute (Penal Law §265.01)

A person is guilty of criminal possession of a weapon in the fourth degree when:

1. He or she possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or “Kung Fu star”; or

## The Basic Offense: CPW in the Fourth Degree

- 2. He possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another.

Criminal possession of a weapon in the fourth degree is a class A misdemeanor.

## The Basic Offense: CPW in the Fourth Degree

- Circumstances:
  - 1. The defendant possesses a firearm
  - 2. The defendant possesses any:

-Chuka stick	-Electronic dart gun	-Cane sword
-Billy	-Electronic stun gun	-Metal knuckles
-Blackjack	-Gravity knife	-Wrist-brace type slingshot or slungshot
-Bludgeon	-Switchblade knife	-“Kung Fu Star”
-Sandclub	-Pilum ballistic knife	
-Shirken	-Metal knuckle knife	
-Sand bag	-Plastic knuckles	

## The Basic Offense: CPW in the Fourth Degree

- Circumstances:
  3. The defendant possesses:
    - Any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, OR
    - Any dangerous or deadly instrument or weapon WITH the intent to use it unlawfully against to another.

## The Basic Offense: CPW in the Fourth Degree

### Elements in the first circumstance

1. The defendant possesses a firearm,
2. The defendant does so knowingly, AND
3. The firearm is operable.

## The Basic Offense: CPW in the Fourth Degree

### Elements in the second circumstance

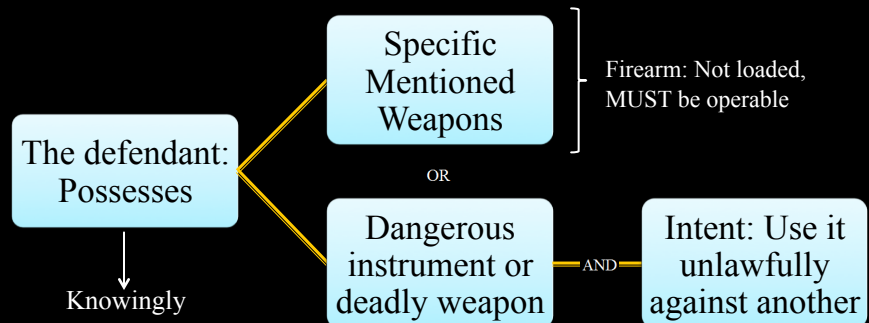
1. The defendant possesses any: firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shiriken or “Kung Fu star”, AND
2. The defendant does so knowingly.

## The Basic Offense: CPW in the Fourth Degree

### Elements in the third circumstance

1. The defendant possesses a dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon,
2. The defendant does so knowingly, AND
3. The defendant does so with the intent to use the weapon unlawfully against another.

## The Basic Offense: CPW in the Fourth Degree



## The Basic Offense and Elevators

- Elevators: from CPW in the Fourth Degree to CPW in the Third, Second and First Degrees

Object: Type, quantity, conditions and place of use of the weapon

Commission of specific crimes

Defendant: culpable mental state and criminal record

Combination of elevators

## CPW in the Third Degree

- Statute (Penal Law §265.02)

A person is guilty of criminal possession of a weapon in the third degree when:

1. Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 265.01, and has been previously convicted of any crime; or
2. Such person possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or

## CPW in the Third Degree

3. Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun.

Criminal possession of a weapon in the third degree is a class D felony.

## CPW in the Third Degree

- Circumstances:

1. The defendant commits CPW in the Fourth Degree and has been convicted of any crime
3. The defendant possesses explosive or incendiary bomb, bombshell, firearm silencer, machine gun or any weapon simulating a machine gun that is operable for that use
3. The defendant possesses a defaced firearm, machine gun, rifle or shotgun

Elevators: Defendant's criminal record, type and conditions of the weapon

## CPW in the Third Degree

### Elements in the first circumstance

- There is not prepared charge for this offense.
- If, upon such arraignment, the defendant admits the element → the court must not make any reference to it in the definition of the offense or in listing the elements of the offense.
- If the defendant denies the element or remains mute → the court must add the element to the definition of the offense and the list of elements.



## CPW in the Third Degree

### Elements in the second circumstance

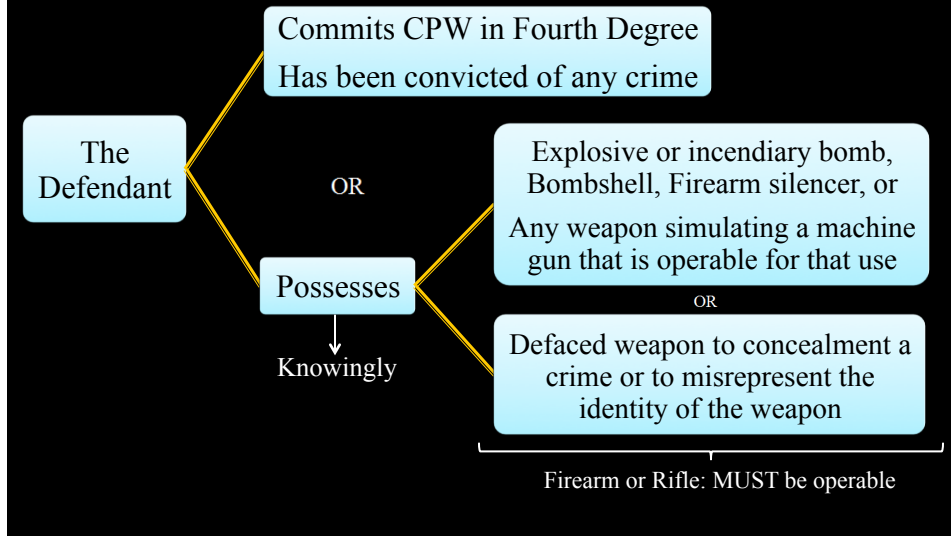
1. The defendant possesses any: explosive or incendiary bomb, bombshell, firearm silencer, machine gun or any weapon simulating a machine gun that is operable for that use, AND
3. The defendant does so knowingly.

## CPW in the Third Degree

### Elements in the third circumstance

1. The defendant possesses: firearm, machine gun, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such,
3. The defendant does so knowingly, AND
4. The weapon is operable.

## CPW in the Third Degree



## CPW in the Second Degree

- Statute (Penal Law § 265.03)

A person is guilty of criminal possession of a weapon in the second degree when:

- With intent to use the same unlawfully against another, such person: (a) possesses a machine-gun; or (b) possesses a loaded firearm; or (c) possesses a disguised gun; or
- Such person possesses five or more firearms; or
- Such person possesses any loaded firearm outside home or place of business

Criminal possession of a weapon in the second degree is a class C felony.

## CPW in the Second Degree

- Circumstances:

1. The defendant possesses a **machine gun**
  2. The defendant possesses a **loaded firearm**
  3. The defendant possesses a **disguised gun**
  4. The defendant possesses **five firearms or more**
  5. The defendant possesses any **loaded firearm outside home or place of business**
- with the **intent to use it unlawfully against another**

Elevators: Type, quantity conditions and place of use of the weapon and defendant's intention

## CPW in the Second Degree

### Elements in the first circumstance

1. The defendant possesses a machine gun,
2. The defendant does so knowingly, AND
3. The defendant possesses the machine gun with the intent to use it unlawfully against another.

## CPW in the Second Degree

### Elements in the second circumstance

1. The defendant possesses a firearm,
2. The defendant does so knowingly,
3. The firearm is loaded and operable, AND
4. The defendant possesses the firearm with the intent to use it unlawfully against another.

## CPW in the Second Degree

### Elements in the third circumstance

1. The defendant possesses a disguised gun,
2. The defendant does so knowingly, AND
3. The defendant possesses the disguised gun with the intent to use it unlawfully against another.

## CPW in the Second Degree

### Elements in the fourth circumstance

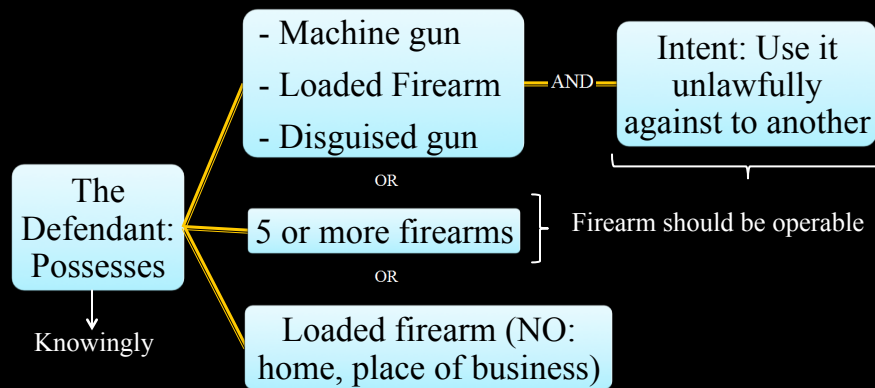
1. The defendant possesses 5 or more firearms,
2. The defendant does so knowingly, AND
3. The 5 or more firearms are operable.

## CPW in the Second Degree

### Elements in the fifth circumstance

1. The defendant possesses a firearm,
2. The defendant does so knowingly,
3. The firearm is loaded and operable, AND
4. The possession does not take place in the home or place of business.

## CPW in the Second Degree



## CPW in the First Degree

- Statute (Penal Law § 265.04)

A person is guilty of criminal possession of a weapon in the first degree when such person:

1. Possesses any explosive substance with intent to use the same unlawfully against the person or property of another;  
or
2. Possesses ten or more firearms.

Criminal possession of a weapon in the first degree is a class B felony.

## CPW in the First Degree

- Circumstances:

1. The defendant possesses any explosive substance with the intent to use it unlawfully against another person or property (The intention is presumed because of the possession)
2. The defendant possesses ten or more firearms

Elevators: Type and quantity of the weapon, defendant's intention

## CPW in the First Degree

### Elements in the first circumstance

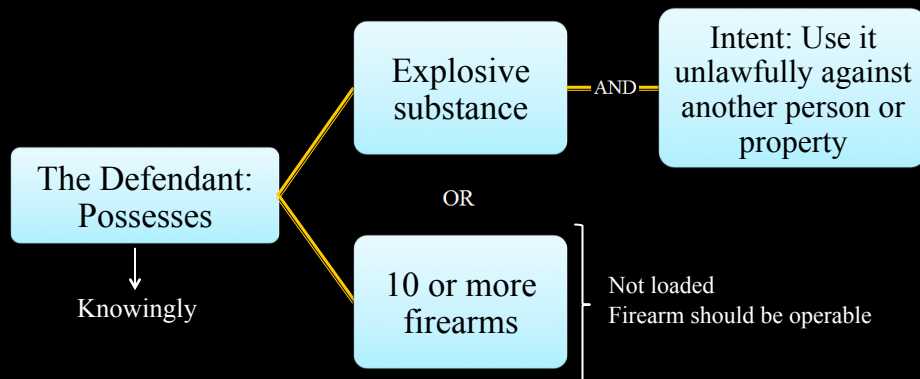
1. The defendant possesses any explosive substance,
2. The defendant does so knowingly, AND
3. The defendant does so with the purpose to use it unlawfully against another person or property.

## CPW in the First Degree

### Elements in the second circumstance

1. The defendant possesses 10 or more firearms,
2. The defendant does so knowingly, AND
3. The firearms are operable.

## CPW in the First Degree





Any Questions?

