

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

Count ____ of the indictment charges defendant with possession of a firearm 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 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 firearm] [there was a firearm].
2. That defendant knowingly possessed the firearm.
3. That defendant possessed the firearm and he/she knew such 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 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.

The first element that the State must prove beyond a reasonable doubt is that [exhibit ____ is a firearm] [there was a firearm]. A firearm includes any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It also includes, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air,

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

and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

In this case the State alleges that defendant was in possession of (name type of firearm).

The second element that the State must prove beyond a reasonable doubt is that defendant knowingly possessed the firearm. 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 [name firearm]), and he/she must know what it is that he/she possesses or controls, in other words, that it is a firearm.

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]

FIREARMS IN EDUCATIONAL INSTITUTION

N.J.S.A. 2C:39-5e(1)

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 firearm 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.¹

The fourth element that the State must prove beyond a reasonable doubt is that the defendant 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.

[**CHARGE IF APPROPRIATE**] It is not a defense to the charge that defendant possessed a valid permit to carry the firearm or a valid firearms purchaser identification card.

¹ State v. Grate, 220 N.J. 317 (2015).

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

[CHARGE IN ALL CASES]

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.