

## POSSESSION OF FIREWORKS

The defendant is charged with possession of fireworks. Section 39 of chapter 148 of our General Laws provides as follows:

“Whoever shall have in his possession or under his control,  
or whoever shall use or explode or cause to explode  
any fireworks in violation of this section  
shall be punished . . . .”

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

*First:* That the defendant (possessed) (had under his [her] control) (used) (exploded) (or) (caused to explode) an item;

*Second:* That the item meets the legal definition of “fireworks”; and

*Third:* That the defendant knew he (she) (possessed) (had under his [her] control) (used) (exploded) (or) (caused to explode) the fireworks.

*Here the jury must be instructed on “Possession” (Instruction 3.220).*

“Fireworks” are defined as any combustible or explosive composition or substance, or any combination of such compositions or substances, or

**any other article which was prepared for the purpose of producing a visible or audible effect by combustion, explosion, detonation, or deflagration — which means to burn rapidly and give off intense heat and sparks — including (blank cartridges or toy cannons in which explosives are used) (the type of toy balloon which requires fire underneath to propel it) (firecrackers) (cherry bombs) (silver salutes) (M-80's)( torpedoes) (sky-rockets) (Roman candles) (sparklers) (rockets) ( wheels) (colored fires) (fountains) (mines) (serpents) (other fireworks of like construction) (any fireworks containing any explosive or flammable compound) (or) (any tablets or other device containing any explosive substance).**

**The Commonwealth must prove beyond a reasonable doubt that the defendant knew he (she) (possessed) (had under his [her] control) (used) (exploded) (or) (caused to explode) these items, and that the defendant knew the items were fireworks.**

*Here the jury must be instructed on "Knowledge" (Instruction 3.140).*