

## **POSSESSION OF AMMUNITION**

G.L. c. 269, § 10(h)

**The defendant is charged with unlawfully possessing ammunition.**

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

***First:* That the defendant possessed an item;**

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

**(and)**

***Third:* That the defendant knew that he (she) possessed that ammunition.**

*If there is evidence of one of the statutory exceptions, use one of the following:*

**A. *If there is evidence that the defendant had a firearm ID card.* and**

***Fourth:* That the defendant did *not* have a valid firearm ID card.**

**B. *If there is evidence that the defendant was exempt.* and**

***Fourth:* That the defendant did *not* qualify for one of the exemptions in the law that are a substitute for having a valid**

**firearm ID card.**

*See Instruction 3.160 (License or Authority).*

G.L. c. 278, § 7; *Commonwealth v. Gouse*, 461 Mass. 787, 802-07 (2012);  
*Commonwealth v. Jones*, 372 Mass. 403, 406-07(1977).

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant possessed the ammunition. A person obviously “possesses” something if he (she) has direct physical control or custody of it at a given time. An object is also considered to be in a person’s possession if he (she) has

- knowledge of the object,
- the ability to exercise control over that object, either directly or through another person, and
- the intent to exercise control over the object.

Whether the defendant possessed the item in question is something that you must determine from all the facts and any reasonable inferences that you can draw from the facts. However, I caution you to remember that merely being present in the vicinity of an item, even if one knows that it is there, does not amount to possession.

*Refer to Instruction 3.220 for a detailed explanation of “possession,” and “joint possession.”*

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the item(s) in question was ammunition.**

**Ammunition is defined in our law as cartridges or cartridge cases, primers (igniters), tear gas cartridges, bullets or propellant powder designed for use in any firearm, rifle or shotgun.**

G.L. c. 269, § 10(o)(¶ 2)

**To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew he (she) was in possession of ammunition. This requires you to make a decision about the defendant's state of mind at that time. You may examine the defendant's actions and words, and all of the surrounding circumstances, to help you determine the extent of the defendant's knowledge at the time.**

*Refer to Instruction 3.140 for a detailed explanation of "knowledge."*

General Laws c. 269, § 10(h) also punishes "own[ing]" or "transfer[ring] possession" as well as possession of ammunition. In cases with such fact patterns, the model instruction may be adapted accordingly.

## SUPPLEMENTAL INSTRUCTIONS

**1. *Absence of evidence of firearm ID card.***

**You have heard some reference to (a firearm ID card) (a legal exemption from the requirement of a firearm ID card). There was no evidence in this case that the defendant had a firearm ID, and no evidence that the defendant qualified for one of the legal exemptions that are a substitute for having a firearm ID card. For that reason, the issue of a firearm ID card or exemption is not relevant to your deliberations in this case, and therefore you should put it out of your mind.**

This instruction is recommended only when, in the jury's presence, there has been some reference to, but not evidence of, a firearm ID card or exemption.

**2. *Knowledge of firearm ID card requirement.***

**You have heard some mention that the defendant did not know that he (she) was required to have a firearm ID card before possessing ammunition. The Commonwealth is *not* required to prove that the defendant knew that the law required him (her) to have a firearm ID card before possessing ammunition.**

This instruction is recommended only when it is necessary to correct such a misimpression.

NOTES:

1. **Notice of affirmative defense.** The affirmative defense of license or exemption from the licensing requirement is available only if notice of such a claim has been properly given pursuant to Mass. R. Crim. P. 14(b)(3). See *Commonwealth v. Humphries*, 465 Mass. 762, 771 (2013).

2. **Firearm identification cards, exemptions.** The issuance of firearm identification cards is governed by G.L. c. 140, §§ 129B-129D. Section 129C lists a number of exemptions from the requirement of a firearm identification card. Generally, these exemptions cover nonresidents in various circumstances, federally licensed firearms manufacturers or wholesale dealers and persons employed by them, persons in the military, police officers and other peace officers of any jurisdiction either in performance of their duties or who are duly authorized to possess, members of a veteran's organization when on official parade duty or ceremonial occasions, to list a few. G.L. c. 140, § 129C, ¶ 4 (a) - (u).

3. **Duplicative convictions.** A conviction for unlawful possession of ammunition is duplicative of a conviction for unlawful possession of a loaded firearm where all of the ammunition is loaded in the firearm. *Commonwealth v. Johnson*, 461 Mass. 44, 53-54 (2011) (separate sentences for each crime violated the double jeopardy clause because the defendant was punished twice for possession of the same ammunition). This is distinguishable from situations where ammunition is found loaded in a firearm and also found elsewhere in the possession of the defendant as the jury can be instructed to distinguish among the ammunition. *Id.* at 53.