

18.17

Definition Of Unlawful Possession Of Firearms And Firearm Ammunition

A person commits the offense of unlawful possession of [(firearms) (firearm ammunition) (handguns)] when he

[1] is under 18 years of age and knowingly has in his possession a [(firearm of a size) (handgun)] which may be concealed upon his person.

[or]

[2] is under 21 years of age and has been [(convicted of the offense of ____) (adjudged delinquent)] and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[3] is a narcotic addict and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[4] has been a patient in a mental hospital within the past 5 years and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[5] is mentally retarded and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[6] knowingly has in his possession an explosive bullet.

Committee Note

720 ILCS 5/24-3.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §24-3.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

When applicable, give Instruction 18.35I, defining the word “handgun.”

When giving paragraph [6], give Instruction 18.35B, defining the term “explosive bullet.”

P.A. 88-680, effective January 1, 1995, provides that if the violation of Section 24-3.1 is committed with a handgun, the offense is increased from a Class A misdemeanor to a Class 4 felony. Accordingly, the Committee has provided the bracketed alternative “(handgun)” to the title of the offense in the opening phrase of this instruction and alternatives [1] through [5] to allow the jury to specifically find this element of the Class 4 felony offense. If an issue arises whether the firearm is a handgun, two separate sets of instructions may be appropriate in order to distinguish between a firearm and a handgun.

Although Section 24-3.1 does not include a mental state, any possession must be knowing. See 720 ILCS 5/4-2 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §4-2 (1991)). See also *People v. Woodworth*, 187 Ill.App.3d 44, 542 N.E.2d 1321, 134 Ill.Dec. 814 (5th Dist.1989).

Insert in the blank the name of the misdemeanor other than a traffic offense when applicable.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.