

**CRIMINAL POSSESSION OF A WEAPON
IN THE FOURTH DEGREE
(Possession of Rifle, Shotgun, etc.
with a Previous Conviction)
Penal Law § 265.01 (4)
(Committed on or after Jan. 30, 2012;
except for, Rifle or Shotgun, Sept. 1, 2022
(Revised July 2016, Dec. 2022) ¹**

The (*specify*) count is Criminal Possession of a Weapon in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Fourth Degree when that person knowingly² possesses a

Select applicable alternative:

rifle,
shotgun,
antique firearm,
black powder rifle,
black powder shotgun, [or]

¹ The July 2016 revision was for the purpose of adding a sentence to the definition of “knowingly” to read: “The defendant is required to know that he or she is in possession of a firearm, but the defendant is not required to know that it was operable.”

The December 2022 revision was for the purpose of amending the definitions of “rifle” and “shotgun” per the L. 2022, ch. 371, effective September 1, 2022. This charge may be used for an offense of possession of a “rifle” or “shotgun” committed on or after September 1, 1974, and before September 1, 2022, by substituting the prior definitions of “rifle” or “shotgun” that are reproduced in the footnote to each term.

² The word “knowingly” has been added to this definition to comport with statutory law (see Penal Law § § 15.00(2) and 15.05 [2]) and with case law. *People v Persce*, 204 NY 397, 402 (1912) (“the possession [of a slungshot] which is meant is a knowing and voluntary one”); *People v Saunders*, 85 NY2d 339, 341-42 (1995) (“‘Possession,’ as part of the forbidden act, includes the Penal Law definitional component of ‘[v]oluntary act,’ which incorporates the attribute of awareness of the possession or control Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon”); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

any muzzle-loading firearm.³

The following terms used in that definition have a special meaning:

[RIFLE means 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 to fire only a single projectile through a rifled bore for each single pull of the trigger using either: (a) fixed metallic cartridge; or (b) each projectile and explosive charge are loaded individually for each shot discharged. (Add if in issue: In addition to common, modern usage, rifles include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fire a single projectile with each discharge, or loading, including muzzle loading rifles, flintlock rifles, and black powder rifles).⁴]

[SHOTGUN 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 to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger

³ At this point, the statute continues: “and has been convicted of a felony or serious offense.” That element must be charged in a special information, and after the commencement of trial the defendant must be arraigned on that special information. 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. But 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 (see CPL 200.60; *People v Cooper*, 78 NY2d 476, 481-482 [1991]). For the definition of “serious offense,” see Penal Law § 265.00 (17).

⁴ Penal Law § 265.00 (11). The previous definition read: RIFLE means 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.

using either: (a) a fixed shotgun shell; or (b) a projectile or number of ball shot and explosive charge are loaded individually for each shot discharged. (Add if in issue: In addition to common, modern usage, shotguns include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fires ball shot with each discharge, or loading, including muzzle loading shotguns, flintlock shotguns, and black powder shotguns).^{5]}

[AN ANTIQUE FIREARM means any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.^{6]}

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁷

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of an object that

⁵ Penal Law § 265.00 (12). The previous definition read: SHOTGUN means 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 or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger

⁶ Penal Law § 265.00 (14).

⁷ Penal Law § 10.00 (8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, see the "Additional Charges" section at the end of the "Table of Contents" of the charges for this article for the appropriate charge.

is (*specify*).⁸ That person need not know (that is, be aware of) the object's name or that it meets the definition of (*specify*).⁹

Under this count, (*specify*) need not be loaded but it must be operable. To be operable, it must be capable of discharging ammunition. The person who possesses the (*specify*) is not required to know that it is operable.¹⁰

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the

8 See Penal Law § 15.05(2). For an expanded instruction on the definition of “knowingly,” see Instructions of General Applicability, Culpable Mental States, Knowingly.

9 See *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (when possession of a gravity knife was a crime, defendants were required to know that “they possessed a knife” but the People were not required “to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife”); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) (“Contrary to defendant’s contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make ‘the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition’ Accordingly, the People did not have to prove that defendant was aware of the statutory definition of a blackjack”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“The People were not required to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

10 Case law has added “operability” of a firearm as an element of the crime (see *People v Longshore*, 86 NY2d 851, 852 [1995]), but has further held that there is no requirement that the possessor know the firearm was operable (see *People v Parrilla*, 27 N.Y.3d 400 [2016] [“Defendants need only knowingly possess a firearm, they need not know that the firearm was loaded or operable”]; *People v Saunders*, 85 NY2d 339, 341-342 [1995]; *People v Ansare*, 96 AD2d 96, 97 [4th Dept 1983]). In December 2022, the last sentence was substituted for: “The defendant is not required to know that it is operable.”

case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name), possessed a (specify).
2. That the defendant did so knowingly; and
3. That the (specify) was operable.¹¹

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

¹¹ If the defendant has admitted the previous conviction, the crime will consist of *only* the three elements listed above. If the defendant has denied the previous conviction or has remained mute, add as the fourth element:

"and 4. That the defendant has been convicted of (specify felony or previous offense that forms basis of this element)."