

**CRIMINAL POSSESSION OF A WEAPON
IN THE FOURTH DEGREE
GHOST GUN
Penal Law § 265.01 (9)
(Committed on or after
April 26, 2022, for a firearm¹;
September 1, 2022, for a rifle or shotgun²)
(Revised Dec 2022)²**

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, such person is not licensed as a gunsmith or a dealer in firearms pursuant to law³ and, knowing it is a ghost gun, such person possesses a ghost gun.

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

¹ While the effective date of the statute is the 180th day after it became law on October 28, 2021 [L. 2021, c. 520], subdivision (2) of Penal Law § 265.60 reads: “provided that a person shall not be guilty under this subdivision when he or she (a) voluntarily surrenders such ghost gun to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision (a) of section 265.20 of this article; or (b) for a period of six months after the effective date of this section possesses a ghost gun prior to serialization and registration of such ghost gun pursuant to section 265.07 of this article.”

² The December 2022 revision was for the purpose of amending the definitions of “rifle” and “shotgun” per L. 2022, ch. 371, effective September 1, 2022. This charge may be used for an offense committed on or after April 26, 2022, and before September 1, 2022, by substituting the prior definitions of “rifle” or “shotgun” that are reproduced in the footnote to each term.

³ The word “law” is substituted for “section 400.00 of this chapter.”

A GHOST GUN means a firearm, rifle, or shotgun that is not serialized – meaning, it does not bear a visible identification number and/or a symbol as required of licensed importers and licensed manufacturers.⁴

⁴ The definition of “ghost gun” is derived from Penal Law §§ 265.00(32), Penal Law § 265.00(8-a), and Penal Law § 265.07:

Penal Law § 265.00(32) specifies that: “ ‘Ghost gun’ means a firearm, rifle or shotgun that does not comply with the provisions of section 265.07 of this article and is not serialized.”

Penal Law § 265.00(8-a) defines “serialized” as follows: “Serialized” means bearing a visible identification number and/or symbol in accordance with the requirements imposed on licensed importers and licensed manufacturers pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto in effect at the time of assembly. . . .”

Penal Law § 265.07 provides, in relevant part, that “[o]n or before the effective date of this section, and promptly upon taking possession thereof at any time thereafter, any person licensed as a gunsmith, or required to be, or a dealer in firearms pursuant to section 400.00 of this chapter, who is in possession of an unserialized firearm, rifle, shotgun, finished frame or receiver, or unfinished frame or receiver shall: (a) engrave, cast, stamp or otherwise conspicuously place both a unique serial number and his or her name (or recognized abbreviation) on such firearm, rifle, shotgun, finished frame or receiver, or unfinished frame or receiver, in a manner that satisfies or exceeds the requirements imposed on licensed importers and manufacturers pursuant to section (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto at the time of such assembly.”

(18 USCA 923(i) reads: “Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer.”)

Thus, an unserialized firearm, rifle or shotgun is a “ghost gun” both because it is “not serialized” and, by virtue of being unserialized, it does not comply with the provisions of Penal Law § 265.07. Thus, for unserialized guns, defining a ghost gun as one that both is unserialized *and* does not comply with Penal Law § 265.07 is redundant. However, subdivision (b) of § 265.07 requires, in relevant part, that a licensed gunsmith or dealer in firearms not only serialize a gun, but also “register [it] with the division of criminal justice services” Thus, the requirement of Penal Law § 265.00(32) that a ghost gun both not comply with Penal Law § 265.07 *and* not be serialized is significant for unregistered guns: it makes a gun that is serialized but not registered not a “ghost gun.”

Add as applicable:

A ghost gun is not

Select appropriate alternative(s):

an antique firearm

(An “antique fireman” 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.⁵)

a firearm, rifle, or shotgun that was manufactured prior to 1968.⁶]

[A FIREARM means any pistol or revolver.⁷]

[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

⁵ Penal Law § 265.00(14).

⁶ This part of the instruction setting forth what a “Ghost gun is not” is derived from Penal Law § 265.00(8-a), which in essence specifies that neither an antique firearm nor a firearm, rifle, or shotgun manufactured prior to 1968 is required to be “serialized” [Penal Law § 265.00(8-a)]. The statutory language appears at the end of the definition of “serialized” and reads as follows: “except for antique firearms as defined in subdivision fourteen of this section, as added by chapter nine hundred eighty-six of the laws of nineteen hundred seventy-four, or any firearm, rifle or shotgun manufactured prior to nineteen hundred sixty-eight.”

⁷ Penal Law § 265.00(3). The statutory definition of a “firearm” includes other weapons. If, therefore, a firearm, other than a pistol or revolver, is in issue, see “DEFINITION OF FIREARM AS OTHER THAN A PISTOL OR REVOLVER” in “Additional Charges” at the end of the Table of Contents for Penal Law article 265 crimes.

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).^{8]}

[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 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.^{9]}

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹⁰ A person must possess the ghost gun, knowing it is a ghost gun, that is, the person must know that he or she possesses a [*select applicable alternative(s):* firearm, rifle, or shotgun] that is not serialized.

⁸ 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.

⁹ 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

¹⁰ 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.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the County of (County), the defendant, defendant's name¹¹ possessed a ghost gun;
2. That the defendant did so knowing it was a ghost gun;
3. That the defendant was not licensed as a gunsmith or a dealer in firearms; and
4. That the ghost gun was operable.

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 When the defendant is charged in whole or in part as an accomplice, Court will add: "personally, or by acting in concert with another person." See Accomplice charge.