

CRIMINAL POSSESSION OF A FIREARM¹
Penal Law § 265.01-b(1)
(Committed on or after March 16, 2013)

(Revised July 2016 & 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 that person knowingly³ possesses any firearm.

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

A FIREARM means any pistol or revolver.⁴

¹ This crime, classified as an E felony, is identical to the crime of possession of a firearm defined in “criminal possession of a weapon in the fourth degree,” a class A misdemeanor (see Penal Law § 265.01 [1]). For guidance on whether to charge the misdemeanor as a lesser included offense of the felony, or whether to charge one or the other as a lesser included offense of possession of a loaded firearm. See *People v. Discala*, 45 N.Y.2d 38 (1978) (coercion crimes); *People v. Finkelstein*, 28 N.Y.3d 345 (2016) (coercion crimes); *People v. Pereau*, 64 N.Y.2d 1055 (1985). See also *People v. Lawrence*, 81 A.D.3d 1326 (2011); *People v. Collins*, 85 A.D.3d 1678, 1678 (2011).

² 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 adding the text associated with footnote (7).

³ 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).

⁴ 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.

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁵

A person KNOWINGLY possesses a firearm when that person is aware that he or she is in possession of an object that is a firearm.⁶ That person need not know (that is, be aware of) the object's name or whether it meets the definition of a firearm.⁷

Under this count, the firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition. A person in possession of a firearm is not required to know that it was operable.⁸

⁵ 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.

⁶ See Penal Law § 15.05(2); For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

⁷ 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).

⁸ 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."

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the of evidence in the 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 firearm;
2. That the defendant did so knowingly; and
3. That the firearm 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.