

**CRIMINAL POSSESSION OF A WEAPON
IN THE THIRD DEGREE
(Possession of Defaced Weapon)
Penal Law § 265.02 (3)
(Committed on or after Dec. 21, 2005;
except, September 1, 2022, for rifle or shotgun)¹
(Revised July 2016)¹**

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

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

Select appropriate weapon:
machine gun
firearm
rifle
shotgun

which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such (*specify*).²

¹ Effective December 21, 2005, the statutory definition of the crime was amended by L 2005, ch 764, § 2 to substitute the word “possesses” for the words “has in his possession.”

In July 2016, in light of *People v Parrilla*, 27 NY3d 400 (2016), the charge was revised to better state the law with respect to the element of “knowingly.”

The December 2022 revision was for the purpose of amending the definitions of “rifle” and “shotgun” to accord with 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 December 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 There is a separate crime, defined in Penal Law § 265.10 (6), making “[a]ny person who wilfully defaces any machine-gun, large capacity ammunition feeding device or firearm. . . guilty of a class D felony.” Pursuant to Penal Law § 265.15 (5), “[t]he possession by any person of a defaced machine-gun, firearm rifle or shotgun is presumptive evidence that such person defaced the same.”

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

[A MACHINE-GUN means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.^{3]}

[A FIREARM means any pistol or revolver.^{4]}

[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.)^{5]}

[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

⁴ Penal Law § 265.00 (1).

⁵ Penal Law § 265.00 (3). 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.

⁵ 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.

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.)^{6]}

DEFACE means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.⁷

POSSESS means to have physical possession or otherwise to the exercise of dominion or control over tangible property.⁸

A person KNOWINGLY possesses (specify) which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting its identity when that person is aware that he or she is in possession of such (specify) which has been defaced for such purpose.⁹

⁶ 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

⁸ Penal Law § 265.00 (7).

⁹ 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.

¹⁰ See Penal Law § 15.05 (2). For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

Under this count, (specify) need not be loaded but it must be operable. To be operable, (specify) must be capable of discharging ammunition. A person in possession of (specify) is not required to know that it was 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 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 (specify) which had been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such (specify);
2. That the defendant did so knowingly; and
3. That such (specify) 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.

¹² 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 (specify) is operable."