

**¹ DISPOSITION & DEFACEMENT OF WEAPONS &
DANGEROUS INSTRUMENTS & APPLIANCES
(Receives, Dispose, Conceal, Defaced Weapon)
Penal Law § 265.10(3)**

**(Committed on or after November 1, 2019; except for:
Large Capacity Ammunition Feeding Device, July 6, 2022)**

(Revised Dec 2022)²

The (specify) count is Defacement of Weapons and Dangerous Instruments and Appliances.³

Under our law, a person is guilty of Defacement of Weapons and Dangerous Instruments and Appliances when he knowingly⁴ buys, or receives, or disposes of, or conceals a

Select appropriate alternative:

large capacity ammunition feeding device

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 the weapon).

¹ The opening portion of the title of this crime [Manufacture, Transport] is omitted because the definition of the crime relates only to Disposition & Defacement of Weapons and Dangerous Instruments and Appliances.

² The December 2022 revision was for the purpose of incorporating a statutory change in the definition of “large capacity ammunition feeding device” per the L. 2022, ch. 209, effective July 6, 2022; and for incorporating a statutory change in the definition of “rifle” and “shotgun” per L. 2022, c. 371.

³ By comparison, Penal Law § 265.02 requires that the actor “knowingly” possess a machine-gun, firearm, rifle, or shotgun, which has been defaced for a stated purpose. A large capacity ammunition feeding device is not one of the specified weapons, as it is in the present crime. Thus, the utility of the present crime is primarily its applicability to a “large capacity feeding device.”

⁴ The word "knowingly" has been added to this definition to comport with statutory law (Penal Law § 15.05[2]) and with case law. *People v. Ford*, 66 NY2d 428, 440 (1985); *People v. Marino*, 212 AD2d 735, 736 (2d Dept. 1995); *People v. Cohen*, 57 AD2d 790 (1st Dept. 1977).

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

A person KNOWINGLY buys, receives, disposes of, or conceals (specify the weapon) which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of (specify the weapon) when that person is aware that he or she is buying, receiving, disposing of, or concealing such (specify the weapon) for that purpose.⁵

“DISPOSE OF” means to dispose of, give, give away, lease-loan, keep for sale, offer, offer for sale, sell, transfer, and otherwise dispose of.⁶

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

Select appropriate weapon definition:

LARGE CAPACITY AMMUNITION FEEDING DEVICE a magazine, belt, drum, feed strip, or similar device, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.⁸

⁵ Penal Law § 15.05(2).

⁶ Penal Law § 265.00(6).

⁷ Penal Law § 265.00(7).

⁸ See Penal Law § 265.00(23), as amended by L. 2022, ch. 209, effective July 6, 2022. As may be appropriate to include, the statutory definition of “large capacity feeding device” continues: “provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to subdivision sixteen-a of section 400.00 of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions

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.⁹

A FIREARM means any pistol or revolver.¹⁰

[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.¹¹]

[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

of section 400.03 of this chapter including the check required to be conducted pursuant to such section.”

⁹ See Penal Law § 265.00(1).

¹⁰ Penal Law § 265.00(3). If the firearm involved is other than a pistol or revolver, see the "Additional Charges" section at the end of the Table of Contents of the Article 265 charges and substitute the appropriate definition.

¹¹ 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.

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.^{12]}

Add to the definition of firearm, rifle, or shotgun:

The (specify) need not be loaded but it must be operable. To be operable, a (specify) must be capable of discharging ammunition. ¹³

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 [two/three] elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), bought, received, disposed of, or concealed (specify the weapon) which had been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such (specify the weapon); [and]
2. That the defendant did so knowingly; [and]

¹² 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.

¹³ Case law has added "operability" of the firearm, rifle or shotgun, as the case may be, to its definition [*People v. Longshore*, 86 NY2d 851, 852 (1995)], but it has further held that there is no requirement that the possessor know the firearm was operable. *People v. Ansare*, 96 AD2d 96 (4th Dept 1983). *Cf. People v. Saunders*, 85 NY2d 339, 341-42 (1995).

NOTE: Omit (3) if the weapon is a “machine gun” which by definition includes “operability.” Add (3) if the weapon is a “firearm,” “rife,” or “shotgun” because decisional law requires that the weapon be operable, and the definitions do not include a requirement of operability:

3. That the (specify the weapon) was operable.

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

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