

**FAILURE TO SAFELY STORE RIFLES, SHOTGUNS, AND
FIREARMS IN THE FIRST DEGREE**
Penal Law § 265.45 (1)
(Committed on or after Sept. 1, 2022)
(Revised Dec 2022)¹

The (*specify*) count is Failure to Safely Store Rifles, Shotguns, and Firearms in the First Degree.

² Under our law, a person is guilty of Failure to Safely Store Rifles, Shotguns, and Firearms in the First Degree, when that person owns or is the custodian of a rifle, shotgun or firearm resides with an individual who:

Select appropriate alternative:

-is under eighteen years of age;

¹ In December 2022, this instruction was revised [1] for the purpose of incorporating statutory amendments of the L. 2022, c. 371, effective September 1, 2022, which changed the applicable age from under 16 to under 18 and amended the definition of "safe storage depository" (reproduced below) by inserting the words highlighted in green type; and [2] for the purpose of amending the definitions of "rifle" and "shotgun" per the L. 2022, ch. 371, effective September 1, 2022.

This instruction may be used for offense charged between Sept. 28, 2019, and September 1, 2022, by changing the age from 18 to 16; omitting the words in green type in the definition of "safe storage depository"; and by substituting the prior definitions of "rifle" or "shotgun" that are reproduced in the footnote to each term.

² The definition of the offense is taken from subdivision (1) of Penal Law § 265.45, with the language of the statute converted to the normal form of a Penal Law statute. The statute reads: "No person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who: (i) is under eighteen years of age; (ii) such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm pursuant to a temporary or final extreme risk protection order issued under article sixty-three-A of the civil practice law and rules or 18 U.S.C. § 922(g) (1), (4), (8) or (9); or (iii) such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or a serious offense, shall store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon."

-such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm pursuant to

Select appropriate alternative:

a temporary or final extreme risk protection order³
federal law⁴;

-such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or a serious offense,

AND FAILS TO store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon.

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

[A FIREARM means any pistol or revolver.⁵

[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

³ Here, the statute continues: "issued under article sixty-three-A of the civil practice law and rules."

⁴ "Federal law" is substituted for: 18 U.S.C. § 922(g) (1), (4), (8) or (9).

⁵ 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.

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.)^{6]}

[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.)^{7]}

Under our law, (*specify*) needs to be operable. The owner or custodian of (*specify*) need not know that it is operable.

(*Specify*) is a (*specify the felony or serious offense*)⁸.

SAFE STORAGE DEPOSITORY shall mean a safe or other secure container which, when locked, is incapable of being opened without the key, **keypad**, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon contained therein **and shall be fire, impact, and tamper resistant.**⁹

⁶ Penal Law § 265.00(11).

⁷ Penal Law § 265.00(12).

⁸ "Serious offense" is defined in Penal Law § 265.00(17).

⁹ Penal Law § 265.45(3).

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹⁰

ADD IF APPROPRIATE:

A person is prohibited from possessing a firearm pursuant to federal law when he or she: (*Insert applicable provision(s) from 18 USC § 922(g) (1), (4), (8) or (9).*)

NOTE: Penal Law § 265.45(4) provides:

It shall not be a violation of this section to allow a person less than eighteen years of age access to:

- (i) a firearm, rifle or shotgun for lawful use as authorized under paragraph seven or seven-e of subdivision a of section 265.20 of this article, or
- (ii) a rifle or shotgun for lawful use as authorized by article eleven of the environmental conservation law when such person less than eighteen years of age is the holder of a hunting license or permit and such rifle or shotgun is used in accordance with such law.

If either provision is in issue, the Court must so instruct the jury and require the People to negate the applicable provision beyond a reasonable doubt by adding an element to the list of elements that states: and # That the defendant did not allow (specify name) access to (specify applicable provision).

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), was an owner or custodian of an operable (specify: firearm, rifle, or shotgun); and
2. That the defendant resided with an individual, (name), who

Select appropriate alternative:

-was under eighteen years of age;

¹² Penal Law § 10.00 (8).

-such person knew or had reason to know was prohibited from possessing a rifle, shotgun or firearm pursuant to

Select appropriate alternative:

a temporary or final extreme risk protection order

federal law;

-such person knew or had reason to know was prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or a serious offense, and

3. That the defendant stored or otherwise left the (specify: firearm, rifle, or shotgun) he/she was the owner or custodian of out of *his/her* immediate possession or control without having first securely locked such (specify: firearm, rifle, or shotgun) in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon.

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.