

**CRIMINAL POSSESSION OF AN UNDETECTABLE
FIREARM, RIFLE OR SHOTGUN**

Penal Law § 265.55(2)

**(Committed on or after Aug. 24, 2019;
except for Rifle or Shotgun, September 1, 2022) ¹**

(Revised December 2022)

The (*specify*) count is criminal possession of an undetectable firearm, rifle or shotgun.

Under our law, a person is guilty of criminal possession of an undetectable firearm, rifle or shotgun when he or she knowingly possesses any major component of a firearm, rifle or shotgun that, if subject to the types of detection devices commonly used at airports for security screening, does not generate an image that adequately displays the shape of the component.

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

MAJOR COMPONENT OF A FIREARM, RIFLE OR SHOTGUN means the barrel, the slide or cylinder, the frame, or receiver of the firearm, rifle, or shotgun.^{2]}

[A FIREARM means any pistol or revolver.^{3]}

[RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed

¹ The December 2022 revision was for the purpose of amending the definitions of “rifle” and “shotgun” per 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 September 1, 1974, and before September 1, 2022, by substituting the prior definitions of “rifle” or “shotgun” that are reproduced in the footnote to each term.

² Penal Law § 265.00 (3-a)

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.

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.)^{4]}

[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.)^{5]}

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁶

⁴ 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.

⁵ 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.

⁶ Penal Law § 10.00 (8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction from the "Additional Charges" section at the end of this chapter.

A person KNOWINGLY possesses a major component of a firearm, rifle or shotgun when that person is aware that he or she is in possession of a major component of a firearm, rifle or shotgun.⁷

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 three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name)⁸, possessed a major component of a (*specify*: firearm, rifle or shotgun);
2. That the major component of that (*specify*: firearm, rifle or shotgun) if subject to the types of detection devices commonly used at airports for security screening, does not generate an image that adequately displays the shape of the component.
3. That the defendant did so knowingly.

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.

⁷ See Penal Law § 15.05(2). If necessary, an expanded definition of “knowingly” is available in the section on Instructions of General Applicability under Culpable Mental States.

⁸ 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.