

**CRIMINAL POSSESSION
OF A WEAPON
FOURTH DEGREE
(A Misdemeanor)
(Possession of Firearm)
PENAL LAW 265.01(1)
(Committed on or after Nov. 1, 1990)**

The ____ 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 knowingly¹ possesses any firearm.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "firearm," "possess," and "knowingly."

A FIREARM means any pistol or revolver.²

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.³

POSSESS means to have physical possession or

¹ 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).

²Penal Law § 265.00(3). If the firearm involved is other than a pistol or revolver, see the "Additional Charges" section at the end of this chapter, and substitute the appropriate definition.

³Case law has added "operability" of the firearm as an element of the crime (*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. *People v. Ansare*, 96 AD2d 96 (4th Dept. 1983). *Cf. People v. Saunders*, 85 NY2d 339, 341-42 (1995).

otherwise to exercise dominion or control over tangible property.⁴

A person KNOWINGLY possesses a firearm when that person is aware that he or she is in possession of such firearm.⁵

In order for you to find the defendant guilty of this crime, the People are required to prove, beyond a reasonable doubt, from all the evidence in the case, 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.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Weapon in the Fourth Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Weapon in the Fourth Degree as charged in the _____ count.

⁴See, 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 as found in the "Additional Charges" section at the end of this chapter.

⁵See, Penal Law § 15.05(2).