

**CRIMINAL POSSESSION
OF A WEAPON
FOURTH DEGREE
(A Misdemeanor)
(Possession of Rifle or Shotgun;
Previous Conviction)
PENAL LAW 265.01(4)
(Committed on or after Sept. 1, 1974)**

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 a rifle [*or* shotgun].²

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: "rifle," ["shotgun,"] "possess," and "knowingly."

A 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

¹ The word "knowingly" has been added to this definition to comport with statutory law (Penal Law § 15.05(2)) and 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).

²An additional element of the crime is that the defendant

“Has been previously convicted of a ‘felony’ or ‘serious offense,’ namely _____.”

That element must be charged in a special information, and after the commencement of trial the defendant must be arraigned on that special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add the element to the definition of the offense and the list of elements. CPL § 200.60. *See, People v. Cooper*, 78 NY2d 476 (1991).

For the definition of "serious offense," *see* Penal Law § 265.00(17).

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.³

[A 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 bore either a number of ball shot or a single projectile for each single pull of the trigger.⁴]

Under this count, the rifle [*or* shotgun] need not be loaded but it must be operable. To be operable, the rifle [*or* shotgun] must be capable of discharging ammunition.⁵

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

A person KNOWINGLY possesses a rifle [*or* shotgun] when that person is aware that he or she is in possession of such 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:

³See Penal Law § 265.00(11).

⁴See Penal Law § 265.00(12).

⁵Case 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).

⁶See 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.

⁷See Penal Law § 15.05(2).

1. That on or about (date) , in the county of county , the defendant, (defendant's name) , possessed a rifle [or shotgun].
2. That the defendant did so knowingly; and
3. That the rifle [or shotgun] was operable.⁸

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.

⁸If the defendant has admitted the previous conviction, the crime will consist of *only* three the elements listed above. If the defendant has denied the previous conviction or has remained mute, add as the fourth element:

"and 4. That the defendant has been convicted of (specify felony or previous offense that forms basis of this element)."