

**CRIMINAL POSSESSION OF A WEAPON
FOURTH DEGREE
(A Misdemeanor)
(Possession of Rifle or Shotgun by
Person Certified Not Suitable)
PENAL LAW 265.01(6)
(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 he or she is a person who has been certified not suitable to possess a rifle or shotgun,¹ and refuses to yield possession of such rifle or shotgun upon the demand of a police officer.

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: "certified not suitable to possess a rifle or shotgun," ["rifle,"] ["shotgun,"] and "possess."

CERTIFIED NOT SUITABLE TO POSSESS A RIFLE OR SHOTGUN means that the director or physician in charge of any hospital or institution for mental illness, public or private, has certified to the superintendent of state police or to any organized police department of a county, city, town or village of this state, that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, is not suitable to possess a rifle or shotgun.²

[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 of the

¹ At this point the statute reads: "as defined in subdivision sixteen of section 265.00." That portion has been omitted and that definition has been included below in the "definition" section of the charge.

² Penal Law § 265.00(16).

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] [shotgun] need not be loaded but it must be operable. To be operable, the [rifle] [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

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), possessed an operable [rifle] [shotgun],
2. That the defendant had been certified not suitable to possess such [rifle] [shotgun], and

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.

3. That the defendant refused to yield possession of such rifle [or shotgun] upon the demand of a police officer.

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.