

**CRIMINAL POSSESSION OF A WEAPON
THIRD DEGREE
(D Felony)
(Possession of Defaced Weapon)
PENAL LAW 265.02(3)
(Committed on or after Dec. 21, 2005)¹**

The _____ count is Criminal Possession of a Weapon in the Third Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Third Degree when that person knowingly possesses a firearm [or rifle] [or shotgun] which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such firearm [or rifle] [or shotgun].

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: ["machine-gun,"] ["firearm,"] ["rifle,"] ["shotgun,"], "defaced," "possess", and "knowingly."

A FIREARM means any pistol or revolver.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 explosive in a fixed metallic cartridge to fire only a single rojectile through a rifled bore for each single pull of the trigger.³]

¹ This charge was revised to substitute the word "possesses" for the words "has in his possession," as required by a statutory amendment, effective December 21, 2005. L. 2005, c. 764.

² Penal Law §265.00(3). If the firearm involved is other than a pistol or revolver, insert the appropriate definition from the "Additional Charges" section at the end of these charges on Firearms and Other Weapons.

³ See Penal Law § 265.00(11).

[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 firearm [*or rifle*] [*or shotgun*] need not be loaded, but it must be operable. To be operable, a firearm [*or rifle*] [*or shotgun*] must be capable of discharging ammunition.⁵

DEFACE means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.⁶

POSSESS means to have physical possession or otherwise to the exercise of dominion or control over tangible property.⁷

A person KNOWINGLY possesses (specify) which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting its identity when that person is aware that he or she is in possession of such (specify) which has been defaced for such purpose.⁸

⁴ See Penal Law § 265.00(12).

⁵ Case 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).

⁶ See Penal Law § 265.00(7).

⁷ See 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 these charges on Firearms and Other Weapons.

⁸ See Penal Law § 15.05(2).

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 (specify) which had been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such (specify);
2. That the defendant did so knowingly; and
3. That such firearm [*or rifle*] [*or shotgun*] 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 Third 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 Third Degree as charged in the _____ count.