

**CRIMINAL POSSESSION OF A WEAPON  
THIRD DEGREE  
(D Felony)  
(Possession of Three [3]  
or More Firearms)  
PENAL LAW 265.02(5)(i)  
(Committed on or after December 21, 2005)<sup>1</sup>**

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<sup>2</sup> possesses three (3) or more firearms.

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.<sup>3</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>4</sup>

A person KNOWINGLY possesses 3 or more firearms when that person is aware that he or she is in possession of 3 or more

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<sup>1</sup> The prior statute prohibited the possession of 20 or more firearms.

<sup>2</sup>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).

<sup>3</sup>If the firearm 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.

<sup>4</sup>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.

firearms.<sup>5</sup>

Under this count, the firearms need not be loaded, but they must be operable. To be operable, a firearm must be capable of discharging ammunition.<sup>6</sup>

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 three (3) or more firearms;
2. That the defendant did so knowingly; and
3. That three (3) or more of such firearms were 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.

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<sup>5</sup>See Penal Law § 15.05(2).

<sup>6</sup>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 that the firearm was operable. *People v. Ansare*, 96 AD2d 96 (4th Dept. 1983). Cf. *People v. Saunders*, 85 NY2d 339, 341-42 (1995).