

**CRIMINAL POSSESSION OF A WEAPON
SECOND DEGREE
(C Felony)
(Possession of Loaded Firearm;
Not in Home or Place of Business)
PENAL LAW 265.03(3)
(Committed on or after Nov. 1, 2006)¹**

The ____ count is Criminal Possession of a Weapon in the Second Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Second Degree when that person knowingly² possesses any loaded firearm. Such possession shall not constitute a violation of this law if such possession takes place in such person's home³ or place of business.

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," "loaded firearm," "possess," and "knowingly."

¹ This offense was formerly Penal Law § 265.02(4), a class D felony, which was repealed by L. 2006, c. 742, § 1, eff. Nov. 1, 2006, and reenacted in the same legislation as Penal Law § 265.03, a Class C felony.

² 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 N.Y.2d 428, 440 (1985); *People v. Marino*, 212 A.D.2d 735, 736 (2nd Dept. 1995); *People v. Cohen*, 57 A.D.2d 790 (1st Dept. 1977).

³In a case involving a homeless shelter, the Court of Appeals held that a person's home "may 'extend to facilities shared by several persons not related to each other' but does not encompass a place 'to which the public or a substantial group of persons has access.'" *People v. Powell*, 54 N.Y.2d 524, 526 (1981).

A FIREARM means any pistol or revolver.⁴

Under our law, a firearm must be operable, that is, the firearm must be capable of discharging ammunition.⁵

A LOADED FIREARM means any firearm loaded with ammunition which may be used to discharge such firearm [or, any firearm which is possessed by one who, at the same time, possesses a quantity of ammunition which may be used to discharge such firearm.]⁶

Possess means to have physical possession or otherwise to exercise dominion or control over tangible property.⁷

A person KNOWINGLY possesses a firearm when that person is aware that he or she is in possession of a firearm.⁸

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,

⁴ Penal 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.

⁵ Case law has added "operability" of the firearm as an element of the crime [*People v. Longshore*, 86 N.Y.2d 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 A.D.2d 96 (4th Dept. 1983). Cf. *People v. Saunders*, 85 N.Y.2d 339, 341-42 (1995).

⁶ See Penal Law § 265.00(15). There is no requirement that the defendant knew the firearm was loaded at the time of possession. See *People v. Broomfield*, 275 A.D. 2d 885 (4th Dept. 2000); *People v. Smith*, 270 A.D.2d 719 (3rd Dept. 2000); *People v. Toribio*, 216 A.D.2d 189 (1st Dept 1995).

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 this chapter.

⁸ See Penal Law § 15.05(2) and see footnotes four and five.

beyond a reasonable doubt, each of the following four 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;
3. That the firearm was loaded and operable; and
4. That the defendant possessed such firearm in a place that was not the defendant's home or place of business.

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 Second Degree as charged in the _____.

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