

**CRIMINAL USE OF A FIREARM  
SECOND DEGREE  
(C FELONY)  
(Possession of deadly weapon)  
PENAL LAW 265.08(1)  
(Committed on or after August 12, 1980)**

The \_\_\_\_\_ count is Criminal Use of a Firearm in the Second Degree.

Under our law, a person is guilty of Criminal Use of a Firearm in the Second Degree when that person commits any Class C violent felony offense and he or she knowingly<sup>1</sup> possesses a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious physical<sup>2</sup> injury may be discharged.

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: "Class C violent felony offense," "knowingly," "possess," and "serious physical injury."

CLASS C VIOLENT FELONY OFFENSE includes (specify name of felony or felonies and define).

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>3</sup>

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<sup>1</sup> The word "knowingly" has been added to this definition to comport with statutory law (Penal Law § 15.05[2]).

<sup>2</sup> "Deadly weapon" is defined in Penal Law § 10.00(12). That definition, however, is incorporated in this section; except, that the definition of deadly weapon refers to "serious physical injury," not simply "serious injury" as set forth in this statute.

<sup>3</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 as found in the "Additional Charges" section at the end of this article.

A person KNOWINGLY possesses a deadly weapon when that person is aware that he or she is in possession of such deadly weapon.<sup>4</sup>

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death, or which causes death, or serious and protracted disfigurement, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.<sup>5</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, the following element:

That on or about (date), in the county of (county), the defendant, (defendant's name), committed any Class C violent felony offense and knowingly possessed a deadly weapon that was a loaded weapon from which a shot, readily capable of producing death or other serious physical injury may be discharged.

Therefore, if you find that the People have proven that element beyond a reasonable doubt, you must find the defendant guilty of the crime of Criminal Use of a Firearm in the Second Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven that element beyond a reasonable doubt, you must find the defendant not guilty of the crime of Criminal Use of a Firearm in the Second Degree as charged in the \_\_\_\_\_ count.

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<sup>4</sup> See, Penal Law § 15.05(2).

<sup>5</sup> See Penal Law § 10.00(10).