

**CRIMINAL USE OF A FIREARM
FIRST DEGREE
(B FELONY)
(Possession of deadly weapon)
PENAL LAW 265.09(1)(a)
(Committed on or after August 12, 1980)**

The _____ count is Criminal Use of a Firearm in the First Degree.

Under our law, a person is guilty of Criminal Use of a Firearm in the First Degree when that person commits any Class B violent felony offense and he or she knowingly¹ possesses a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious physical² 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 B violent felony offense," "knowingly," "possess," and "serious physical injury.

CLASS B 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.³

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

² "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.

³ 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.⁴

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.⁵

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 B 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 First 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 First Degree as charged in the _____ count.

⁴ See, Penal Law § 15.05(2).

⁵ See Penal Law § 10.00(10).