

**CRIMINAL POSSESSION OF A FIREARM**  
**Penal Law § 265.01-b (1)**  
**(Committed on or after Mar. 16, 2013)<sup>1</sup>**  
**(Revised July 2016)<sup>2</sup>**

The (*specify*) count is Criminal Possession of a Firearm.

Under our law, a person is guilty of Criminal Possession of a Firearm when that person knowingly<sup>3</sup> possesses any firearm.

The following terms used in that definition have a special meaning:

A FIREARM means: any pistol or revolver.<sup>4</sup>

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<sup>1</sup> This crime, classified as an E felony, is identical to the crime of possession of a firearm defined in “criminal possession of a weapon in the fourth degree,” a class A misdemeanor (see Penal Law § 265.01 [1]). For guidance on whether to charge the misdemeanor as a lesser included offense of the felony, or whether to charge one or the other as a lesser included offense of possession of a loaded firearm, see *People v. Discala*, 45 N.Y.2d 38 (1978); *People v. Eboli*, 34 N.Y.2d 281 (1974).

<sup>2</sup> In July 2016, in light of *People v Parrilla*, 27 N.Y.3d 400(2016), the charge was revised to better state the law with respect to the element of “knowingly.”

<sup>3</sup> The word “knowingly” has been added to this definition to comport with statutory law (see Penal Law § 15.05 [2]) and with case law (see *People v Parrilla*, 27 N.Y.3d 400 [2016]; *People v Saunders*, 85 NY2d 339, 341-342 [1995]; *People v Ford*, 66 NY2d 428, 440 [1985]; *People v Marino*, 212 AD2d 735, 736 [2d Dept 1995]; *People v Cohen*, 57 AD2d 790, 791 [1st Dept 1977]).

<sup>4</sup> Penal Law § 265.00 (3). That statutory definition of a “firearm” also includes a “sawed-off” rifle or shotgun, and an “assault weapon,” and excludes an “antique firearm.” If any one of those weapons is in issue, see the “Additional Charges” section at the end of the “Table of Contents” of the charges for this article for the appropriate charge.

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>5</sup>

A person KNOWINGLY possesses a firearm when that person is aware that he or she is in possession of such firearm.<sup>6</sup>

Under this count, the firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition. The defendant is required to know that he or she is in possession of a firearm, but the defendant is not required to know that it was operable.<sup>7</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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 a firearm;
2. That the defendant did so knowingly; and
3. That the firearm was operable.

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<sup>5</sup> Penal Law § 10.00 (8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, see the "Additional Charges" section at the end of the "Table of Contents" of the charges for this article for the appropriate charge.

<sup>6</sup> See Penal Law § 15.05 (2). For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

<sup>7</sup> Case law has added "operability" of a firearm as an element of the crime (see *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 (see *People v Parrilla*, 27 N.Y.3d 400 [2016] ["Defendants need only knowingly possess a firearm, they need not know that the firearm was loaded or operable"]; *People v Saunders*, 85 NY2d 339, 341-342 [1995]; *People v Ansare*, 96 AD2d 96, 97 [4th Dept 1983]).

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.