

**FAILURE TO SAFELY STORE RIFLES, SHOTGUNS, AND  
FIREARMS IN THE FIRST DEGREE<sup>1</sup>  
Penal Law § 265.45  
(Committed on or after Sept. 28, 2019)**

The (*specify*) count is Failure to Safely Store Rifles, Shotguns, and Firearms in the First Degree.

Under our law, a person is guilty of Failure to Safely Store Rifles, Shotguns, and Firearms in the First Degree, when a<sup>2</sup> person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who:

*Select appropriate alternative:*

-is under sixteen years of age;

-such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm pursuant to

*Select appropriate alternative:*

a temporary or final extreme risk protection order<sup>3</sup>  
federal law<sup>4</sup>;

-such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or a serious offense,

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<sup>1</sup>For the predecessor statute, Safe Storage of Rifles, Shotguns, and Firearms, in effect from March 16, 2013 to Sept. 28, 2019, see Appendix, Former Article 265 charges.

<sup>2</sup> This charge converts the language of the statute to the normal form of a Penal Law statute. The way the statute reads is: “No person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who such person knows or has reason to know is prohibited from possessing a firearm pursuant to > 18 U.S.C. § 922(g) (1), (4), (8) or (9) shall store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon.”

<sup>3</sup> Here, the statute continues: “issued under article sixty-three-A of the civil practice law and rules.”

<sup>4</sup> “Federal law” is substituted for: 18 U.S.C. § 922(g) (1), (4), (8) or (9).

stores or otherwise leaves<sup>5</sup> such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon.

[A person is prohibited from possessing a firearm pursuant to federal law when he or she:

Note: Insert applicable provision(s) from 18 USC § 922(g) (1), (4), (8) or (9)).]

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

A FIREARM means: any pistol or revolver.<sup>6</sup>

[A RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.<sup>7</sup>]

[A SHOTGUN means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade, to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.<sup>8</sup>]

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<sup>5</sup> The words "store or otherwise leave" are substituted for "shall store or otherwise leave."

<sup>6</sup> Penal Law § 265.00 (3). The statutory definition of a "firearm" also includes certain types of shotguns or rifles, and an "assault weapon," and excludes an "antique firearm." If the firearm in issue is an applicable shotgun or rifle, or if it is in issue whether the firearm is an "antique firearm," see the "Additional Charges" section at the end of the "table of contents" of the charges for this article for the appropriate charge.

<sup>7</sup> Penal Law § 265.00 (11).

<sup>8</sup> Penal Law § 265.00 (12).

(Specify) is a (specify: felony or serious offense<sup>9</sup>).

SAFE STORAGE DEPOSITORY shall mean a safe or other secure container which, when locked, is incapable of being opened without the key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon contained therein.<sup>10</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>11</sup>

*Note: The statute states that in two circumstances, "It shall not be a violation of this section . . ." as stated below. If in issue, the Court must determine whether the People must disprove an applicable circumstance beyond a reasonable doubt by setting forth an additional element with respect to the circumstance in issue or whether the defendant must prove an applicable circumstance by a preponderance of the evidence. The applicable circumstances are as follows:*

It is not a violation of this law to allow a person less than sixteen years of age access to:

Select appropriate alternative:

-a firearm, rifle or shotgun for lawful use as authorized by law;

*Note: The words "by law" substitute for the statutory words: "under paragraph seven or seven-e of subdivision a of section 265.20 of this article." The Court must accordingly here add the applicable language from Penal Law § 265.20(a) (7) or (7-e).*

-a rifle or shotgun for lawful use as authorized by law when such person less than sixteen years of age is the holder of a hunting license or permit and such rifle or shotgun is used in accordance with such law.

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<sup>9</sup> Defined in Penal Law § 265.00(11).

<sup>9</sup> Penal Law § 265.45.

<sup>10</sup> Penal Law § 10.00 (8).

*Note: The words "by law" substitute for the statutory words: "by article eleven [Fish and Wildlife] of the environmental conservation law." The Court must accordingly here add the applicable law from that article.*

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), was an owner or custodian of a (specify: firearm, rifle, or shotgun); and

2. That the defendant resided with an individual who

Select appropriate alternative:

-was under sixteen years of age;

-such person knew or had reason to know was prohibited from possessing a rifle, shotgun or firearm pursuant to

Select appropriate alternative:

a temporary or final extreme risk protection order  
federal law;

-such person knew or had reason to know was prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or a serious offense, and

3. That the defendant stored or otherwise left the (specify: firearm, rifle, or shotgun) he/she was the owner or custodian of out of his/her immediate possession or control without having first securely locked such (specify: firearm, rifle, or shotgun) in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon.

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.