

**SAFE STORAGE OF RIFLES, SHOTGUNS, AND FIREARMS**  
**Penal Law § 265.45**  
**(Committed on or after March 16, 2013)**

The (*specify*) count is Safe Storage of Rifles, Shotguns, and Firearms.

Under our law, a person is guilty of Safe Storage of Rifles, Shotguns, and Firearms, when that person owns or is custodian of a rifle, shotgun or firearm and resides with an individual who such person knows or has reason to know is prohibited from possessing a firearm [pursuant to federal law<sup>1</sup>], and stores or otherwise leaves 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:

(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:"

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<sup>1</sup> At this point the statute states "pursuant to 18 USC § 922 (g) (1), (4), (8) or (9)." If it is in issue that the resident is prohibited from possessing a firearm pursuant to that law, the court should include the words in the brackets and then add the next bracketed paragraph defining the applicable federal provision(s). Note that Penal Law § 265.45 also includes the following: "With respect to a person who is prohibited from possessing a firearm pursuant to 18 USC § 922 (g) (9), for purposes of this section, this section applies only if such person has been convicted of a crime included in subdivision one of section 370.15 of the criminal procedure law and such gun is possessed within five years from the later of the date of conviction or completion of sentence."

A FIREARM means: any pistol or revolver.<sup>2</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>3</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>4</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>5</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>6</sup>

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<sup>2</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>3</sup> Penal Law § 265.00 (11).

<sup>4</sup> Penal Law § 265.00 (12).

<sup>5</sup> Penal Law § 265.45.

<sup>6</sup> Penal Law § 10.00 (8).

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 the defendant knew or had reason to know was prohibited from possessing a firearm [pursuant to federal law]; 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.