

**CRIMINAL POSSESSION OF A WEAPON
IN THE FOURTH DEGREE
(Possession on School Grounds)
Penal Law § 265.01(3)
(Committed on or after Nov. 1, 2006)¹**

The (*specify*) count is Criminal Possession of a Weapon in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Fourth Degree when that person knowingly has in his or her possession a rifle [*or* shotgun] [*or* firearm] in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, [*or* upon a school bus]², without the written authorization of such educational institution.

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

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.³

[A SHOTGUN means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and

¹ This charge has been revised to accord with a statutory amendment, effective November 1, 2006 (L.2006, c.436) which added the words “or upon a school bus.”

² The statute here refers to a school bus “as defined in section one hundred forty-two of the vehicle and traffic law.” The definition is set forth below.

³ See Penal Law § 265.00(11).

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.^{4]}

[A FIREARM means any pistol or revolver. ^{5]}

Under this count, the rifle [or shotgun] [or firearm] need not be loaded but must be operable. To be operable, the rifle [or shotgun] [or firearm] must be capable of discharging ammunition.⁶

POSSESS means to have physical possession or otherwise to exercise of dominion or control over tangible property.⁷

A person KNOWINGLY has in his or her possession a rifle [or shotgun] [or firearm] in or upon a building or grounds, used for educational purposes, of any school, college or university, or upon a school bus, without the written authorization of such educational institution when that person is aware that he or she is in possession of such rifle [or shotgun] [or firearm] in or upon a building or grounds, used for educational purposes, of any

⁴ See Penal Law § 265.00(12).

⁵ If the firearm involved is other than a pistol or revolver, insert the appropriate definition from the "Additional Charges" section at the end of this chapter.

⁶ Case law has added "operability" of the firearm as an element of the crime [*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. *People v. Ansare*, 96 AD2d 96 (4th Dept. 1983). Cf. *People v. Saunders*, 85 NY2d 339, 341-42 (1995).

⁷ 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 from the "Additional Charges" section at the end of this chapter.

school, college or university, [or upon a school bus] and when he or she is aware that such possession is without the written authorization of such educational institution.⁸

[SCHOOL BUS means every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.]⁹

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, each of the following four elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name) had in his/her possession a rifle [or shotgun] [or firearm] in or upon a building or grounds, used for educational purposes, of any school, college or university, [or upon a school bus], without the written authorization of such educational institution;
2. That the defendant did so knowingly;
3. That the possession did not take place on the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry; and
4. That the rifle [or shotgun] [or firearm] was operable.

⁸ See Penal Law § 15.05(2).

⁹ Vehicle and Traffic Law § 142.

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.