

**CRIMINAL POSSESSION OF A WEAPON  
IN THE FOURTH DEGREE  
(Possession of Firearm with a Previous Conviction)  
Penal Law § 265.01 (4)  
(Committed on or after:**

**Sept. 1, 1974 for rifle or shotgun;**

**Jan. 30, 2012 for antique firearm, black powder rifle,  
black powder shotgun, or muzzle-loading firearm.)  
(Revised July 2016)<sup>1</sup>**

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<sup>2</sup> possesses a

Select applicable alternative:

rifle,  
shotgun,  
antique firearm,  
black powder rifle,  
black powder shotgun, [or]

---

<sup>1</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>2</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]).

any muzzle-loading firearm.<sup>3</sup>

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.<sup>4</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>5</sup>]

[AN ANTIQUE FIREARM means any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which

---

<sup>3</sup> At this point, the statute continues: “and has been convicted of a felony or serious offense.” That element must be charged in a special information, and after the commencement of trial the defendant must be arraigned on that special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add the element to the definition of the offense and the list of elements (see CPL 200.60; *People v Cooper*, 78 NY2d 476, 481-482 [1991]). For the definition of “serious offense,” see Penal Law § 265.00 (17).

<sup>4</sup> Penal Law § 265.00 (11).

<sup>5</sup> Penal Law § 265.00 (12).

uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.<sup>6]</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>7</sup>

A person KNOWINGLY possesses (*specify*) when that person is aware that he or she is in possession of it.<sup>8</sup>

Under this count, (*specify*) need not be loaded but it must be operable. To be operable, it must be capable of discharging ammunition. The defendant is required to know that he or she is in possession of a (*specify*), but the defendant is not required to know that the it was operable.<sup>9</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 (*specify*).

---

<sup>6</sup> Penal Law § 265.00 (14).

<sup>7</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>8</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>9</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]).

2. That the defendant did so knowingly; and
3. That the (specify) was operable.<sup>10</sup>

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.

---

<sup>10</sup> If the defendant has admitted the previous conviction, the crime will consist of *only* the three elements listed above. If the defendant has denied the previous conviction or has remained mute, add as the fourth element:

"and 4. That the defendant has been convicted of (specify felony or previous offense that forms basis of this element)."