

**CRIMINAL POSSESSION OF A WEAPON
ON SCHOOL GROUNDS
Penal Law § 265.01-a
(Committed on or after Mar. 16, 2013)¹
(Revised July 2016)²**

The (*specify*) count is Criminal Possession of a Weapon on School Grounds.

Under our law, a person is guilty of Criminal Possession of a Weapon on School Grounds when that person knowingly has in his or her possession a

Select appropriate weapon(s):

rifle
shotgun
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*³], without the written authorization of such educational institution.

¹ This statute superseded “criminal possession of a weapon in the fourth degree,” as defined in Penal Law § 265.01 (3). That former statute was initially enacted in 1974 (see L 1974, ch 1041, § 3), and amended in 2006 (see L 2006, ch 199, § 1) to add the words “or upon a school bus, as defined in section 142 of the vehicle and traffic law.” In 2013, that fourth degree crime, a class A misdemeanor, was repealed and reenacted in this section as a class E felony (see L 2013, ch 1, § 41). Thus, except for the name of the crime, this charge may be used for the former crime.

² In July 2016, in light of *People v Parrilla*, __NY3d__, 2016 NY Slip Op 03417 (2016), the charge was revised to better state the law with respect to the element of “knowingly.”

³ At this point, the statute continues: “as defined in section 142 of the vehicle and traffic law.” That definition, if applicable, is included below.

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

[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.⁴]

[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.⁵]

[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.⁶]

[A FIREARM means any pistol or revolver.⁷]

⁴ Vehicle and Traffic Law § 142.

⁵ Penal Law § 265.00 (11).

⁶ Penal Law § 265.00 (12).

⁷ 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.⁸

A person KNOWINGLY has in his or her possession a (*specify*) 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 weapon in or upon a building or grounds, used for educational purposes, of any 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.⁹

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 it was operable.¹⁰

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 four elements:

⁸ 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.

⁹ See Penal Law § 15.05 (2). For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

¹⁰ 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*, __NY3d__, 2016 NY Slip Op 03417 [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]).

1. That on or about *(date)*, in the county of *(County)*, the defendant, *(defendant's name)*, had in his/her possession a *(specify)* 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 *(specify)* was operable; and
4. 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.

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.