

**CRIMINAL POSSESSION OF A WEAPON
ON SCHOOL GROUNDS
Penal Law § 265.01-a
(Committed on or after Mar. 16, 2013, except for
Rifle or Shotgun, Sept. 1, 2022)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

¹ This statute superseded “criminal possession of a weapon in the fourth degree,” as defined in Penal Law § 265.01 (3).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 In 2013, that fourth degree crime, a class A misdemeanor, was repealed and reenacted in this section as a class E felony (see L 2013, ch 1, § 41).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*, 27 N.Y.3d 400 (2016), the charge was revised to better state the law with respect to the element of “knowingly.”

The December 2022 revision was for the purpose of amending the definitions of “rifle” and “shotgun” per the L. 2022, ch. 371, effective September 1, 2022; and for the purpose of revising the definition of “knowingly.” This instruction may be used for an offense of possession of a “rifle” or “shotgun” committed on or after March 16, 2013, and before September 1, 2022 by substituting the prior definitions of “rifle” or “shotgun” that are reproduced in the footnote to each term.

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 bus³], without the written authorization of such educational institution.

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]

[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 to fire only a single projectile through a rifled bore for each single pull of the trigger using either: (a) fixed metallic cartridge; or (b) each projectile and explosive charge are loaded individually for each shot discharged. (Add if in issue: In addition to common, modern usage, rifles include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fire a single projectile with each discharge, or loading, including muzzle loading rifles, flintlock rifles, and black powder rifles).⁵]

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.

⁴ Vehicle and Traffic Law § 142.

⁵ Penal Law § 265.00 (11). The previous definition read: RIFLE means a

[SHOTGUN 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 to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger using either: (a) a fixed shotgun shell; or (b) a projectile or number of ball shot and explosive charge are loaded individually for each shot discharged. (*Add if in issue:* In addition to common, modern usage, shotguns include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fires ball shot with each discharge, or loading, including muzzle loading shotguns, flintlock shotguns, and black powder shotguns.)⁶]

[A FIREARM means any pistol or revolver.⁷]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁸

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.

⁶ Penal Law § 265.00 (12). The previous definition read: 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 or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.

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.

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.

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 an object that is (specify weapon)⁹ in or upon a such building or grounds [or upon a school bus] and when he or she is aware that such possession is without the written authorization of such educational institution.¹⁰

Under this count, (specify) need not be loaded but it must be operable. To be operable, it must be capable of discharging ammunition. A person in possession of (specify) is not required to know that it was operable.¹¹

⁹ *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (when possession of a gravity knife was a crime, defendants were required to know that “they possessed a knife” but the People were not required “to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife”); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) (“Contrary to defendant’s contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make ‘the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition’ Accordingly, the People did not have to prove that defendant was aware of the statutory definition of a blackjack”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“The People were not required to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

¹⁰ See Penal Law § 15.05 (2). For an expanded charge on the definition of “knowingly,” see Instructions of General Applicability, Culpable Mental States, Knowingly.

¹¹ 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]). In December 2022, the last sentence was substituted for: “The defendant is not required to know that it is operable.”

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:

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.