

**CRIMINAL POSSESSION OF A FIREARM
(Failure to Register)
Penal Law § 265.01-b (2)
(Committed on or after Apr. 15, 2013)¹
(Revised July 2016)²**

The (specify) count is Criminal Possession of a Firearm.

Under our law, a person is guilty of Criminal Possession of a Firearm when that person knowingly³ and lawfully possessed a firearm prior to March 16, 2013⁴ that became⁵ subject to the

¹ This crime was added by the Laws of 2012, chapter 1, with an effective date of March 16, 2013. However, the effective date of the registration requirement, which is referenced in the definition of this crime (see footnote 4) and is set forth in Penal Law § 400.00 (16-a), is April 15, 2013. Therefore, the effective date of this crime is on or after April 15, 2013.

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

⁴ At this point, the statute states: “prior to the effective date of the chapter of the laws of two thousand thirteen which added this section.” The charge substitutes the applicable date.

⁵ The language “that became” was added for clarity.

registration requirements of the law as of April 15, 2013,⁶ and knowingly fails to register such firearm pursuant to such law.⁷

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

A firearm includes an assault weapon. The definition of the applicable assault weapon is as follows: (*specify*)⁸.

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁹

A person KNOWINGLY possesses a (*specify*) when that person is aware that he or she is in possession of such firearm.¹⁰

Under this count, the firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of

⁶ At this point, the statute states: “requirements of subdivision sixteen-a of section 400.00 of this chapter.” This charge substitutes the “requirements of the law,” and includes those requirements below.

⁷ At this point, the statute states: “pursuant to such subdivision,” and the charge substitutes “pursuant to such law.”

⁸ Penal Law § 265.00 (3) sets forth the definition of a firearm, which includes an “assault weapon.” Penal Law § 400.00 (16-a) sets forth the registration requirements of certain assault weapons specified in that section. The definition of the applicable “assault weapon” is set forth in Penal Law § 265.00 (22) (added by L 2000, ch 189 § 10, effective November 1, 2000; amended by L 2013, ch 1, § 37, effective March 16, 2013). The definition of the applicable assault weapon should be inserted here.

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.

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.

discharging ammunition. The defendant is required to know that he or she is in possession of a firearm, but the defendant is not required to know that the firearm was operable.¹¹

PRIOR TO MARCH 16, 2013, a person could LAWFULLY own and possess (*specify*), without being required to register it. After April 15, 2013, the owner of such firearm was required to register it with the Superintendent of State Police.

[NOTE: If the requirement of registration is in dispute, insert here such requirements of registration, pursuant to Penal Law § 400.00 (16-a), as applicable.]

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, prior to March 16, 2013, the defendant, (*defendant's name*), knowingly and lawfully possessed an assault weapon;
2. That on or about (*date [must be on or after April 15, 2013]*), in the county of (*County*), the defendant knowingly possessed that same firearm;
3. That the firearm was operable; and
4. That the defendant was required by law to register that firearm, and knowingly failed to do so.

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*, __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]).

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.