

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

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 knowingly<sup>3</sup> and lawfully possessed a firearm prior to March 16, 2013<sup>4</sup> that became<sup>5</sup> subject to the registration requirements of the law as of April 15,

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<sup>1</sup> 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.

<sup>2</sup> The July 2016 revision was for the purpose of adding a sentence to the definition of “knowingly” to read: “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 it was operable.”

<sup>3</sup> The word "knowingly" has been added to this definition to comport with statutory law (see Penal Law §§ 15.00(2) and 15.05 [2]) and with case law. *People v Persce*, 204 NY 397, 402 (1912) ("the possession [of a slungshot] which is meant is a knowing and voluntary one"); *People v Saunders*, 85 NY2d 339, 341-42 (1995) ("Possession,' as part of the forbidden act, includes the Penal Law definitional component of '[v]oluntary act,' which incorporates the attribute of awareness of the possession or control . . . . Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon"); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

<sup>4</sup> 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.

<sup>5</sup> The language “that became” was added for clarity.

2013,<sup>6</sup> and knowingly fails to register such firearm pursuant to such law.<sup>7</sup>

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*)<sup>8</sup>.

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

A person KNOWINGLY<sup>10</sup> possesses a firearm when that person is aware that he or she is in possession of an object that is an assault weapon. That person need not know (that is, be aware of) the object's name or whether it meets the legal definition of a

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<sup>6</sup> At this point, the statute states: "requirements of subdivision sixteen-a of section 400.00 of this chapter." (That statute contains registration requirements of an assault weapon.) This charge substitutes the "requirements of the law," and includes those requirements below.

<sup>7</sup> At this point, the statute states: "pursuant to such subdivision," and the charge substitutes "pursuant to such law."

<sup>8</sup> 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.

<sup>9</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>10</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.

firearm.<sup>11</sup>

Under this count, the firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition. A person who possess a firearm is not required to know that the firearm was operable.<sup>12</sup>

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.]**

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<sup>11</sup> See *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).

<sup>12</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). 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, 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.

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.