

**CRIMINAL POSSESSION OF A WEAPON
IN THE THIRD DEGREE
(Possession of Assault Weapon)
Penal Law § 265.02 (7)
(Committed on or after Nov. 1, 2000)
(Revised July 2016)¹**

The (*specify*) count is Criminal Possession of a Weapon in the Third Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Third Degree when that person knowingly² possesses an assault weapon.

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

ASSAULT WEAPON means (*specify*).

Note: Penal Law § 265.00 (22) provides a description of various weapons which would constitute an "assault weapon." The description of the weapon applicable to the instant case should be inserted here.

¹ 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."

² 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]).

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.³

A person KNOWINGLY possesses an assault weapon when that person is aware that he or she is in possession of such weapon.⁴

Under this count, the assault weapon need not be loaded but it must be operable. To be operable, an assault weapon must be capable of discharging ammunition. The defendant is required to know that he or she is in possession of an assault weapon, but the defendant is not required to know that the assault weapon was operable.⁵

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 an assault weapon;
2. That the defendant did so knowingly; and

³ 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.

⁴ See Penal Law § 15.05 (2). For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

⁵ 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]).

3. That the assault weapon was operable.

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.