

**CRIMINAL POSSESSION OF A WEAPON  
IN THE THIRD DEGREE  
(Assault Weapon)  
Penal Law § 265.02 (7)  
(Committed on or after Nov. 1, 2000)  
(Revised July 2016, Dec 2021)<sup>1</sup>**

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 knowingly<sup>2</sup> 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.*

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<sup>1</sup> The July 2016 revision was for the purpose stated in footnote 2.

The Dec. 2021 revision was for the purpose of conforming the definition of knowingly to the requirements of *People v Steinmetz*, 177 AD3d 1292, 1293 [4th Dept 2019] which holds that 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.” See also *People v. Parrilla*, 27 NY3d 400 [2016].

<sup>2</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).

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

A person KNOWINGLY possesses an assault weapon when that person is aware that he or she is in possession of a rifle.<sup>4</sup> The rifle must meet the law's definition of an assault weapon. A person who possesses the rifle must be aware that he or she is in possession of a rifle; he or she is not also required to be aware that the rifle meets the law's specific definition of an assault weapon.<sup>5</sup>

An assault weapon need not be loaded but it must be operable. To be operable, an assault weapon must be capable of discharging ammunition. A person who possess an assault weapon is not required to know that it was operable.<sup>6</sup>

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) possessed a rifle;
2. That the defendant did so knowingly;
3. That the rifle was an assault weapon; and

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<sup>3</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>4</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.

<sup>5</sup> See footnote 1, second paragraph.

<sup>6</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 NY3d 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]).

4. 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.