

**CRIMINAL POSSESSION OF A WEAPON
IN THE SECOND DEGREE
(Loaded Firearm)
(with Intent to Use Unlawfully)
Penal Law § 265.03 (1) (b)
(Committed on or after Nov. 1, 1998)¹
(Revised June 2006; Jan. 2011; July 2016; Dec 2022)²**

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

Under our law, a person is guilty of Criminal Possession of a Weapon in the Second Degree when, with intent to use the same unlawfully against another, that person knowingly³ possesses a loaded firearm.

¹ By the Laws of 2005, chapter 764, this provision was renumbered without substantive change. By the Laws of 2006, chapter 742, effective November 1, 2006, this provision was repealed, and by the Laws of 2006, chapter 745, effective December 15, 2006, it was reenacted. For crimes committed on or after September 1, 1974, and before November 1, 1998, the paragraph defining the crime should read: "Under our law, a person is guilty of Criminal Possession of a Weapon in the Second Degree when that person knowingly possesses a loaded firearm with intent to use the same unlawfully against another." Otherwise, the charge remains the same.

² The charge was revised in 2006 to accord with the case law cited in footnote six and it was revised in 2011 to accord with the case law cited in footnote ten. In July 2016 and December 2022, the instruction on the definition of "knowingly" was revised to better state the applicable law.

³ 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).

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

A FIREARM means any pistol or revolver.⁴ A LOADED FIREARM means any firearm loaded with ammunition which may be used to discharge such firearm [or any firearm which is possessed by one who, at the same time, possesses a quantity of ammunition which may be used to discharge such firearm.]⁵

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁶

A person KNOWINGLY possesses a firearm when that person is aware that he or she is in possession of an object that is a firearm.⁷ That person need not know (that is, be aware of) the object's name or that it meets the definition of firearm.

Under this count, the firearm must be loaded and operable. To be operable, a firearm must be capable of discharging ammunition. A person in possession of a firearm is not required to know that the firearm was loaded or operable.⁸

⁴ Penal Law § 265.00(3). The statutory definition of a "firearm" includes other weapons. If, therefore, a firearm, other than a pistol or revolver, is in issue, see "DEFINITION OF FIREARM AS OTHER THAN A PISTOL OR REVOLVER" in "Additional Charges" at the end of the Table of Contents for Penal Law article 265 crimes.

⁵ Penal Law § 265.00 (15).

⁶ Penal Law § 10.00 (8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction from the "Additional Charges" section at the end of this article.

⁷ See Penal Law § 15.05 (2). For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

⁸ 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]). In December 2022, the last sentence was substituted for: "The defendant is not

required to know that it is loaded or operable.”

INTENT means conscious objective or purpose.⁹ Thus, a person acts with intent to use a loaded firearm unlawfully against another when his or her conscious objective or purpose is to use that loaded firearm unlawfully against another.

[Note: In cases where defendant is alleged to have used the loaded firearm, omit the period in the last sentence and add:

, and, that intent need only exist at the very moment that a person engages in an unlawful use of the firearm against another.^{10]}

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 firearm;
2. That the defendant did so knowingly;
3. That the firearm was loaded and operable; and
4. That the defendant possessed the loaded firearm with the intent to use it unlawfully against another.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

⁹ See Penal Law § 15.05 (1).

¹⁰ See *People v Muhammad*, 17 NY3d 532, 543 (2011). For a further enhanced charge on intent, particularly if the People rely on a statutory presumption of intent, see the appropriate instruction from the "Additional Charges" section at the end of this CJI article.

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.