

**<sup>1</sup> DEFACEMENT OF WEAPONS AND DANGEROUS  
INSTRUMENTS AND APPLIANCES**

**(Defaces Weapon)**

**Penal Law § 265.10(6)**

(Committed on or after November 1, 2000).

The (*specify*) count is Defacement of Weapons and Dangerous Instruments and Appliances.<sup>2</sup>

Under our law, a person is guilty of the Defacement of Weapons and Dangerous Instruments and Appliances when he wilfully defaces any

Select appropriate alternative:

large capacity ammunition feeding device  
machine-gun  
firearm.

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

A person WILFULLY defaces a (*specify*) when that person's conscious objective or purpose is to deface a (*specify*)<sup>3</sup>.

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<sup>1</sup> The opening portion of the title of this crime [Manufacture, Transport, Disposition and] is omitted because the definition of the crime relates only to Defacement of Weapons and Dangerous Instruments and Appliances.

<sup>2</sup> By comparison, Penal Law § 265.02 requires that the actor "knowingly" possess a machine-gun, firearm, rifle, or shotgun, which has been defaced for a stated purpose. A large capacity ammunition feeding device is not one of the specified weapons.

The instant crime, Penal Law § 265.10(6), requires that the defendant be in fact the person who defaced the machine-gun, firearm, or large capacity ammunition feeding device, irrespective of the purpose. While a large capacity ammunition device is included, a rifle or shotgun is not.

<sup>3</sup> See Penal Law § 15.05(1); Black's Law Dictionary (11th ed. 2019) indicates that "wilfully" is akin to "intentionally"; *People v. Coe*, 71 N.Y.2d 852 (1988) held that "wilfully" in a statute that defined a misdemeanor meant "knowingly," while seemingly indicating that "higher culpable mental states" were "appropriate for intentional crimes classified as felonies." *Id.* at 855.

“DEFACE” means to remove, deface, cover, alter or destroy the manufacturer’s serial number or any other distinguishing number or identification mark.<sup>4</sup>

Select appropriate weapon definition:

**LARGE CAPACITY AMMUNITION FEEDING DEVICE** means a magazine, belt, drum, feed strip, or similar device, [manufactured after September 13, 1994<sup>5</sup>], that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.<sup>6</sup>

**MACHINE-GUN** means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one

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<sup>4</sup> Penal Law § 265.00(7).

<sup>5</sup> Effective January 15, 2013, the requirement that the device be “manufactured after September 13, 1994 was repealed. L.2013, c. 1, as amended by L.2013, c. 57].

<sup>6</sup> See Penal Law § 265.00(23). As may be appropriate to include, the statutory definition of “large capacity feeding device” continues:

“provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to subdivision sixteen-a of section 400.00 of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions of section 400.03 of this chapter including the check required to be conducted pursuant to such section.”

continuous pull of the trigger and includes a sub-machine gun.<sup>7</sup>

A FIREARM means any pistol or revolver.<sup>8</sup> The firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition.<sup>9</sup>

Note: Add if appropriate:

The possession by any person of a defaced machine-gun, firearm, rifle, or shotgun is presumptive evidence that such person defaced the same.<sup>10</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following [two/three] elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), defaced (specify); [and]
2. That the defendant did so wilfully;

*NOTE: Omit (3) if the weapon is a "machine gun" which by definition includes "operability." Add (3) if the weapon is a "firearm," "rifle," or "shotgun" because decisional law requires that the weapon be operable, and the definitions do not include a requirement of operability:*

3. That the firearm was operable.

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<sup>7</sup> See Penal Law § 265.00(1).

<sup>8</sup> Penal Law § 265.00(3). If the firearm involved is other than a pistol or revolver, see the "Additional Charges" section at the end of the Table of Contents of the Article 265 charges and substitute the appropriate definition.

<sup>9</sup> Case law has added "operability" of the firearm to its definition [*People v. Longshore*, 86 NY2d 851, 852 (1995)], but it has further held that there is no requirement that the possessor know the firearm was operable. *People v. Ansare*, 96 AD2d 96 (4th Dept 1983). *Cf. People v. Saunders*, 85 NY2d 339, 341-42 (1995).

<sup>10</sup> Penal Law w § 265.15 (5).

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

If you find that the People have not proven beyond a reasonable doubt (either one / any one) or more of those elements, you must find the defendant not guilty of this crime.