

CRIMINAL PURCHASE OR DISPOSAL OF A WEAPON
Penal Law § 265.17 (3)
(Committed on or after July 1, 2021;
except for Rifle or Shotgun September 1, 2022)¹
(Revised December 2022)¹

The (specify) count is Criminal Purchase or Disposal of a Weapon.

Under our law, a person is guilty of Criminal Purchase or Disposal of a Weapon when,

Select appropriate alternative(s):

knowing that another person is prohibited by law from possessing a (specify: firearm, rifle, or shotgun) because of a prior conviction² [or] because of some [other] disability which would render that other person ineligible to lawfully possess a firearm, [rifle or shotgun] in this state, [or]

¹ Effective July 1, 2021, this statute was amended to include the alternative: “or knowing that he or she is the subject of an outstanding warrant of arrest issued upon the alleged commission of a felony or serious offense.” L. 2021, c. 236. With the omission of the 2021 addition, this instruction may be used for an offense committed between March 16, 2013, and July 1, 2021.

The December 2022 revision was for the purpose of amending the definitions of “rifle” and “shotgun” per the L. 2022, ch. 371, effective September 1, 2022. This charge may be used for this offense involving a “rifle” or “shotgun” committed on or after July 1, 2021, and before September 1, 2022, by substituting the prior definitions of “rifle” or “shotgun” that are reproduced in the footnote to each term.

² See CPL 200.60 with respect to the procedure applicable when a prior conviction is an element of a crime. See also *People v. Cooper*, 78 N.Y.2d 476 (1991) and its progeny. In brief, the prior conviction needs to be alleged in an Information and the defendant given an opportunity to admit, deny, or stand mute with respect to the allegation; should the defendant admit the allegation, the element is proved and must not be read to the jury. See NY Model Colloquies, Arraignment On A Special Information Charging A Previous Conviction.

knowing that another person is the subject of an outstanding warrant of arrest issued upon the alleged commission of a felony or serious offense,

he or she disposes of a (specify: firearm, rifle, or shotgun) to such other person.

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

“FIREARM” means any pistol or revolver.³

[RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive to fire only a single projectile through a rifled bore for each single pull of the trigger using either: (a) fixed metallic cartridge; or (b) each projectile and explosive charge are loaded individually for each shot discharged. (Add if in issue: In addition to common, modern usage, rifles include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fire a single projectile with each discharge, or loading, including muzzle loading rifles, flintlock rifles, and black powder rifles.⁴]

3 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.

4 Penal Law § 265.00 (11). The previous definition read: RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

[SHOTGUN a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger using either: (a) a fixed shotgun shell; or (b) a projectile or number of ball shot and explosive charge are loaded individually for each shot discharged. (Add if in issue: In addition to common, modern usage, shotguns include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fires ball shot with each discharge, or loading, including muzzle loading shotguns, flintlock shotguns, and black powder shotguns.⁵]

The firearm [rifle, or shotgun] need not be loaded but it must be operable. To be operable, the firearm, [rifle, or shotgun] must be capable of discharging ammunition.⁶

“POSSESS” means to have physical possession or otherwise to exercise dominion or control over tangible property.⁷

⁵ Penal Law § 265.00 (12). The previous definition read: SHOTGUN means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger

⁶ 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]).

⁷ Penal Law § 10.00(8). If necessary, an expanded charge on the definition of “possess” may be found in the Instructions of General Applicability under “Possession.”

“DISPOSE OF” means to dispose of, give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.⁸

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, both of the following two elements:

1. That on or about (*date*), in the county of (*County*) the defendant disposed of a firearm [rifle or shotgun] to [*specify*]; and
2. That the defendant did so,

Add appropriate alternative(s):

knowing that (*specify*) was prohibited by law from possessing a firearm [rifle or shotgun]
because of a prior conviction⁹ [or]
because of some [other] disability which would render him or her ineligible to lawfully possess a (*specify*) in this state] [or]

knowing that (*specify*) was the subject of an outstanding warrant of arrest issued upon the alleged commission of a felony or serious offense.

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

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must

⁸ Penal Law § 10.00(6).

⁹ See footnote 2.

find the defendant not guilty of this crime.