FAILURE TO SAFELY STORE RIFLES, SHOTGUNS, AND FIREARMS IN THE FIRST DEGREE
Penal Law § 265.45(2)
(Committed on or after Sept. 1, 2022)

(Revised December 2022)[1]

The (*specify*) count is Failure to Safely Store Rifles, Shotguns, and Firearms in the First Degree.

[2] Under our law, a person is guilty of Failure to Safely Store Rifles, Shotguns, and Firearms in the First Degree when a person stores or otherwise leaves a rifle, shotgun, or firearm out of his or her immediate possession or control inside a vehicle without first removing the ammunition from and securely locking such rifle, shotgun, or firearm in an appropriate safe storage depository out of sight from outside of the vehicle.

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

[A FIREARM means any pistol or revolver.[3]

---

[1] 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 an offense of possession of a "rifle" or "shotgun" committed on or after September 1, 1974, and before September 1, 2022, by substituting the prior definitions of "rifle" or "shotgun" that are reproduced in the footnote to each term.

[2] The definition of the offense is taken from subdivision (2) of Penal Law § 265.45, with the language of the statute converted to the normal form of a Penal Law statute. Subdivision (2) reads: "No person shall store or otherwise leave a rifle, shotgun, or firearm out of his or her immediate possession or control inside a vehicle without first removing the ammunition from and securely locking such rifle, shotgun, or firearm in an appropriate safe storage depository out of sight from outside of the vehicle."

[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.

[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]]

[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]]

Under our law, (*specify*) needs to be operable. The owner or custodian of (*specify*) need not know that it is operable.

---

[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.

[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

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

SAFE STORAGE DEPOSITORY shall mean a safe or other secure container which, when locked, is incapable of being opened without the key, keypad, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon contained therein and shall be fire, impact, and tamper resistant.[7]

A glove compartment or glove box shall not be considered an appropriate safe storage depository.[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, each of the following three elements:

1. That on or about *(date)*, in the county of *(County)*, the defendant, *(defendant's name)*, stored or otherwise left an operable (*specify: a firearm, rifle, or shotgun*) out of his or her immediate possession or control inside a vehicle; and

2. That the defendant did so without first removing the ammunition from and securely locking such rifle, shotgun, or firearm in an appropriate safe storage depository out of sight from outside of the vehicle.

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

---

[12] Penal Law § 10.00 (8).

[7] Penal Law § 265.45(3).

[8] Penal Law § 265.45(3).

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