

**CRIMINAL POSSESSION OF A WEAPON
IN THE SECOND DEGREE
(Possession of Five [5] or More Firearms)
Penal Law § 265.03 (2)
(Committed on or after Dec. 21, 2005)**

(Revised July 2016, Dec 2022, & 2023)¹

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 that person knowingly² possesses five (5) or more firearms.

*NOTE: Penal Law § 30.00(2) specifies that a “juvenile offender” (14 or 15 years of age) “is criminally responsible for acts constituting. . . section 265.03 of [the Penal Law], where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in [Penal Law § 200.00(14)].”³ In turn, CPL 190.71 authorizes a Grand Jury to indict the “juvenile offender” for a violation of Penal Law § 265.03 for the possession of a machine gun or firearm on school grounds. In accord therefore with those statutes, as held in *People v**

¹ In July 2016 and December 2022, the instruction on the definition of “knowingly” was revised to better state the applicable law. The December 2023 revision was for the purpose of adding the Note that follows the definition of the crime.

² 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).

³ “School grounds” means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an “area accessible to the public” shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants. Penal Law § 220.00(14).

Raul A., 215 AD3d 500 (1st Dept 2023), when a “juvenile offender” is indicted for possession of a machine gun or firearm in violation of Penal Law § 265.03: [1] the words “and the possession took place on school grounds” must be included in the indictment; [2] those words must be added to the definition of the crime set forth in this instruction; [3] the applicable part of the definition of “school grounds” (set forth in footnote) must be added in the definition section of this instruction; and [4] the element of possession on school grounds must be added to the list of elements the People must prove beyond a reasonable doubt.

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

A FIREARM means any pistol or revolver.⁴

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁵

A person KNOWINGLY possesses five [or more] firearms when that person is aware that he or she is in possession of five [or more] objects,

Select as appropriate:
each of which is
at least five of which are

a firearm.⁶ That person need not know (that is, be aware of) the object’s name or that it meets the definition of a firearm.⁷

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 § 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.

⁶ See Penal Law § 15.05(2). For an expanded instruction on the definition of “knowingly,” see Instructions of General Applicability, Culpable Mental States, Knowingly.

⁷ See *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (when possession of a

Under this count, a firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition. A person in possession a firearm is not required to know that the firearm is operable.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 (specify number) elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name) possessed five (5) or more firearms;
2. That the defendant did so knowingly; [and]
3. That five (5) or more of such firearms were operable; [and]
- [4. That the defendant possessed five (5) or more of

gravity knife was a crime, defendants were required to know that “they possessed a knife” but the People were not required “to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife”); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) (“Contrary to defendant’s contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make ‘the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition’ Accordingly, the People did not have to prove that defendant was aware of the statutory definition of a blackjack”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“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”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

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 operable.”

such firearms on school grounds.^{9]}

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.

⁹ See the Note at the end of the definition of the crime.