

**CRIMINAL SALE OF A FIREARM  
IN THE SECOND DEGREE  
(Five [5] or more)  
Penal Law § 265.12 (1)  
(Committed on or after Dec. 21, 2005<sup>1</sup>)  
(Revised July 2016)<sup>2</sup>**

The (*specify*) count is Criminal Sale of a Firearm in the Second Degree.

Under our law, a person is guilty of Criminal Sale of a Firearm in the Second Degree when that person knowingly<sup>3</sup> and unlawfully sells, exchanges, gives, or disposes of to another five or more firearms.

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

A FIREARM means any pistol or revolver.<sup>4</sup>

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<sup>1</sup> The prior statute, Penal Law § 265.12, prohibited the sale of 10 or more firearms. Effective December 21, 2005, the law was amended as presently provided by Penal Law § 265.12 (1) and the instant charge (see L 2005, ch 764, § 6).

<sup>2</sup> In July 2016, in light of *People v Parrilla*, 27 NY3d 400 [2016], the charge was revised to better state the law with respect to the element of “knowingly.”

<sup>3</sup> 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).

<sup>4</sup> Penal Law § 265.00 (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.

A person KNOWINGLY sells, exchanges, gives, or disposes of five or more firearms to another when that person is aware that he or she is doing so.<sup>5</sup>

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 who sells, exchanges, gives, or disposes of a firearm is not required to know that the firearm is operable.<sup>6</sup>

A person UNLAWFULLY sells, exchanges, gives, or disposes of five or more firearms to another when he has no legal right to do so.<sup>7</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to sell, exchange, give, or dispose of a firearm.

DISPOSE OF means to dispose of, give away, lease, loan, keep for sale, offer for sale, sell, transfer and otherwise dispose of.<sup>8</sup>

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:

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<sup>5</sup> See Penal Law § 15.05 (2). For an expanded charge on the definition of "knowingly," see Instructions of General Applicability, Culpable Mental States, Knowingly.

<sup>6</sup> 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 *Parrilla* at 405 ["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 the firearm was operable."

<sup>7</sup> See Penal Law article 400.

<sup>8</sup> Penal Law § 265.00 (6)

1. That on or about (date) , in the county of (County) , the defendant, (defendant's name), sold, exchanged, gave, or disposed of five or more firearms to another; and
2. That the defendant did so knowingly and unlawfully; and
3. That [each] [at least five] of the firearms (was/were) operable.

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.