

**CRIMINAL SALE OF A FIREARM
THIRD DEGREE
(D Felony)
(Sells Firearm or Ammunition Device)
PENAL LAW 265.11(1)
(Committed on or after Nov. 1, 2000)**

The _____ count is Criminal Sale of a Firearm in the Third Degree.

Under our law, a person is guilty of Criminal Sale of a Firearm in the Third Degree when that person is not authorized pursuant to law to possess a firearm and he or she knowingly¹ and unlawfully sells, exchanges, gives or disposes of a firearm [or large capacity ammunition feeding device] to another person.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "not authorized pursuant to law to possess a firearm," "knowingly," "unlawfully," "dispose of," "firearm," [and "large capacity ammunition feeding device"]

A person is NOT AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM when that person has no legal right to possess a firearm.² Under our law, with certain exceptions not applicable here, a person has no legal right to possess a firearm.

A person KNOWINGLY sells, exchanges, gives, or disposes of a firearm [or large capacity ammunition feeding device] to

¹ The word "knowingly" has been added to this definition to comport with statutory law (Penal Law § 15.05(2)) and with case law. *People v. Ford*, 66 NY2d 428, 440 (1985); *People v. Marino*, 212 AD2d 735, 736 (2d Dept. 1995); *People v. Cohen*, 57 AD2d 790 (1st Dept. 1977).

² See Penal Law article 400.

another when that person is aware that he or she is doing so.³

A person UNLAWFULLY sells, exchanges, gives or disposes of a firearm [or large capacity ammunition feeding device] when that person has no legal right to do so.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to sell, exchange, give or dispose of a firearm [or large capacity ammunition feeding device] to another person.

A FIREARM means any pistol or revolver.⁵

Under our law, the firearm need not be loaded with ammunition, but the firearm must be operable, that is, the firearm must be capable of discharging ammunition.⁶

DISPOSE OF means to dispose of, give away, lease, loan, keep for sale, offer for sale, sell, transfer and otherwise dispose of.⁷

[LARGE CAPACITY AMMUNITION FEEDING DEVICE means a magazine, belt, drum, feed strip, or similar device, manufactured after September 13, 1994, that has a capacity of, or that can be readily restored or converted to accept, more than ten

³See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

⁴ See Penal Law article 400.

⁵ Penal Law §265.00(3). If the firearm involved is other than a pistol or revolver, insert the appropriate definition from the “Additional Charges” section at the end of this chapter.

⁶ Case law has added "operability" of the firearm as an element of the crime (*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. *People v. Ansare*, 96 AD2d 96 (4th Dept. 1983). Cf. *People v. Saunders*, 85 NY2d 339, 341-42 (1995).

⁷ Penal Law § 265.00(6)

rounds of ammunition.]⁸

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 (three/four) elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name) was not authorized pursuant to law to possess a firearm [or large capacity ammunition feeding device];
2. That the defendant unlawfully sold, exchanged, gave, or disposed of a firearm [or large capacity ammunition feeding device] to another person; [and]
3. That the defendant did so knowingly; [and]

 [Add if item is a firearm:

4. That the firearm was operable.]

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Sale of a Firearm Third Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Sale of a Firearm Third Degree as charged in the _____ count.

⁸ See Penal Law § 265.00(23). The term large ammunition feeding device does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.