

**CRIMINAL SALE OF A FIREARM
THIRD DEGREE
(D Felony)
(Possesses Firearm with Intent to Sell)
PENAL LAW 265.11(2)
(Committed on or after Nov. 1, 1999)**

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 possesses a firearm with the intent to sell it.

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,” “firearm,” “knowingly,” “unlawfully,” “possess”, and “intent to sell.”

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

A FIREARM means any pistol or revolver.³

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.

³ Penal Law § 265.00(3). If the firearm involved is other than a pistol or revolver, see the "Additional Charges" section at the end of this chapter, and substitute the appropriate definition.

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.⁴

A person KNOWINGLY possesses a firearm when that person is aware that he or she is in possession of a firearm.⁵

A person UNLAWFULLY possesses a firearm when that person has no legal right to possess a firearm.⁶ Under our law, with certain exceptions not applicable here, a person has no legal right to possess a firearm.

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

INTENT means conscious objective or purpose. Thus, a person possesses a firearm with intent to sell it when his or her conscious objective or purpose is to sell the firearm.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 four elements:

⁴ 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).

⁵ See Penal Law § 15.05(2). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

⁵ See Penal Law article 400.

⁷ See Penal Law § 10.00(8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction as found in the "Additional Charges" section at the end of this chapter.

⁸ See Penal Law § 15.05(1).

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;
2. That the defendant knowingly and unlawfully possessed a firearm;
3. That the defendant possessed that firearm with the intent to sell it; and
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.