

**CRIMINAL SALE OF A FIREARM
SECOND DEGREE
(C Felony)
(5 or more)
PENAL LAW 265.12(1)¹
(Committed on or after December 21, 2005)**

The _____ 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 knowingly² and unlawfully sells, exchanges, gives, or disposes of to another five or more firearms.

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: "knowingly," "unlawfully," "dispose of," and "firearm."

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.³

A person UNLAWFULLY sells, exchanges, gives, or disposes of five or more firearms to another when he has no legal

¹ The prior statute [Penal Law § 265.12] prohibited the sale of 10 or more firearms, and, effective December 21, 2005, was amended as presently provided by Penal Law § 265.12(1). Laws of 2005, c. 764.

² 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).

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

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.

DISPOSE OF means to dispose of, give away, lease, loan, keep for sale, offer for sale, sell, transfer and otherwise dispose of.⁵

A FIREARM means any pistol or revolver.⁶

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.⁷

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 elements:

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.

⁴ See Penal Law article 400.

⁵ Penal Law § 265.00(6)

⁶ 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.

⁷Case 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).

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 in the Second 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 of those elements, you must find the defendant not guilty of the crime of Criminal Sale of a Firearm in the Second Degree as charged in the _____ count.