

**CRIMINAL SALE OF A FIREARM  
SECOND DEGREE  
(C Felony)  
(5 or more within one year)  
PENAL LAW 265.12(2)  
(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 knowingly<sup>1</sup> and unlawfully sells, exchanges, gives, or disposes of to another person or persons a total of five or more firearms in a period of not more than one year.

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 a total of five or more firearms to another when that person is aware that he or she is doing so.<sup>2</sup>

A person UNLAWFULLY sells, exchanges, gives, or disposes of a total of five or more firearms to another when he has no legal right to do so.<sup>3</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.

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<sup>1</sup> 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).

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

<sup>3</sup> See Penal Law article 400.

DISPOSE OF means to dispose of, give away, lease, loan, keep for sale, offer for sale, sell, transfer and otherwise dispose of.<sup>4</sup>

A FIREARM means any pistol or revolver.<sup>5</sup>

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.<sup>6</sup>

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 (dates), in the county of (county), the defendant, (defendant's name), sold, exchanged, gave, or disposed of a total of five or more firearms to another person or persons in a period of not more than one year; and
2. That the defendant did so knowingly and unlawfully; and
3. That [each] [at least five] of the firearms (was/were) operable.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the

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<sup>4</sup> Penal Law § 265.00(6)

<sup>5</sup> 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.

<sup>6</sup>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).

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.