

**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*, \_\_NY3d\_\_, 2016 NY Slip Op 03417 (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 § 15.05 [2]) and with case law (see *People v Parrilla*, \_\_NY3d\_\_, 2016 NY Slip Op 03417 [2016]; *People v Saunders*, 85 NY2d 339, 341-342 [1995]; *People v Ford*, 66 NY2d 428, 440 [1985]; *People v Marino*, 212 AD2d 735, 736 [2d Dept 1995]; *People v Cohen*, 57 AD2d 790, 791 [1st Dept 1977]).

<sup>4</sup> Penal Law § 265.00 (3). That statutory definition of a “firearm” also includes a “sawed-off” rifle or shotgun, and an “assault weapon,” and excludes an “antique firearm.” If any one of those weapons is in issue, see the “Additional Charges” section at the end of the “Table of Contents” of the charges for this article for the appropriate charge.

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. The defendant is required to know that he or she is in possession of a firearm, but the defendant is not required to know that the firearm was 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 *People v Parrilla*, \_\_NY3d\_\_, 2016 NY Slip Op 03417 [2016] ["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]).

<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.