

**CRIMINAL SALE OF A FIREARM  
IN THE SECOND DEGREE  
(Two or more within one year)  
Penal Law § 265.12 (2)  
(Committed on or after May 9, 2022)<sup>1</sup>  
(Revised July 2016, May 2022)<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 person or persons a total of two or more firearms in a period of not more than one year.

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> This instruction may be utilized for the alleged commission of the offense between December 21, 2005 and May 9, 2022 with the number of requisite firearms changed to five.

<sup>2</sup> In July 2016, in light of *People v Parrilla*, 27 NY3d 400 [2016], this instruction was revised to better state the law with respect to the element of “knowingly.”

In May 2022, this instruction was amended to account for the statutory amendment reducing the number of applicable firearms from five to two. L. 2022, c. 56.

<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 (*Parrilla*; *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 a total of two 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 a total of five or more firearms to another when that person 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:

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 two or more firearms to another person or persons in a period of not more than one year; and

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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 *Parrilla* at 405 ["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).

2. That the defendant did so knowingly and unlawfully;  
and
3. That [each] [at least two] 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.