

**CRIMINAL SALE OF A FIREARM IN THE FIRST DEGREE**  
**(Ten [10] or more)**  
**Penal Law § 265.13 (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 First Degree.

Under our law, a person is guilty of Criminal Sale of a Firearm in the First Degree when that person knowingly<sup>3</sup> and unlawfully sells, exchanges, gives, or disposes of to another ten 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 § 265.13, prohibited the sale of 20 or more firearms. Effective December 21, 2005, the law was amended as presently provided by Penal Law § 265.13(1) and the instant charge (see L 2005, ch 764, § 7).

<sup>2</sup> In July 2016, in light of *People v Parrilla*, 27 NY3d 400 (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 § 15.00(2) and 15.05 [2]) and with case law. *People v Persce*, 204 NY 397, 402 (1912) (“the possession [of a slungshot] which is meant is a knowing and voluntary one”); *People v Saunders*, 85 NY2d 339, 341-42 (1995) (“‘Possession,’ as part of the forbidden act, includes the Penal Law definitional component of ‘[v]oluntary act,’ which incorporates the attribute of awareness of the possession or control . . . . Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon”); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

<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 ten 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. A person who sells, exchanges, gives, or disposes of a firearm is not required to know that the firearm is operable.<sup>6</sup>

A person UNLAWFULLY sells, exchanges, gives, or disposes of ten 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). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

<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*, 27 NY3d 400 [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 ten or more firearms to another; and
2. That the defendant did so knowingly and unlawfully; and
3. That [each] [at least ten] 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.