

Criminal Sale Of A Firearm To A Minor
Penal Law § 265.16
(Committed on or after Nov 1, 1992)

Under our law, a person is guilty of Criminal Sale Of A Firearm To A Minor when that person is not authorized pursuant to law to possess a firearm and that person unlawfully sells, exchanges, gives or disposes of a firearm to another individual who is or reasonably appears to be less than nineteen years of age who is not licensed pursuant to law to possess a firearm.

The following terms used in that definition have a special meaning:

A FIREARM means any pistol or revolver. ¹

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property. ²

DISPOSE OF means to dispose of, give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of. ³

A person is NOT AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM when that person has no legal right to possess a firearm.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to possess a firearm.⁵

¹ Penal Law § 265.00(3). The statutory definition of a “firearm” includes other weapons. If, therefore, a firearm, other than a pistol or revolver, is in issue, see “DEFINITION OF FIREARM AS OTHER THAN A PISTOL OR REVOLVER” in “Additional Charges” at the end of the Table of Contents for Penal Law article 265 crimes.

² Penal Law § 10.00(8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, see the “Additional Charges” section at the end of the “Table of Contents” of the charges for this article for the appropriate charge.

³ Penal Law § 265.00(6).

⁴ See Penal Law article 400.

⁵ In *People v. Tatis*, 170 A.D.3d 45 (1st Dept 2019), the Appellate Division reviewed NYC Administrative Code § 10-131(i)(3) that prohibits the possession of a pistol or revolver within the City by “any person not authorized to possess”

A person UNLAWFULLY sells, exchanges, gives or disposes of a firearm to another individual when that person has no legal right to do so. Under our law, with certain exceptions not applicable here, a person has no legal right to sell a firearm.⁶

Under this count, the firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging ammunition. The person who possesses a firearm is not required to know that it was operable.⁷

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the of evidence in the case, beyond a reasonable doubt, each of the following four elements:

same and held that the quoted language “constitutes an exception and not a proviso. Consequently, it was the People's burden to prove that the defendant was not authorized to possess a pistol or revolver within the City of New York.” Parallel language appears in the definition of the instant Penal Law crime. *Tatis*, however, distinguished Penal Law firearm crimes:

“The People point to Penal Law section 265.20, which is a catalogue of exemptions to various Penal Law weapon provisions, including one for ‘[p]ossession of a pistol or revolver by a person to whom a license therefor has been issued . . .’ (Penal Law § 265.20[a][3]). These exemptions must be raised by a defendant in the first instance before the prosecution is required to disprove them beyond a reasonable doubt. However, the People's reliance on Penal Law section 265.20 and such exemptions is unavailing as that section is distinguishable from the statute at issue in this case. Because the exemptions in Penal Law section 265.20 are found outside the particular Penal Law provisions to which they apply, interpreting them to require an initial showing by a defendant is consistent with the interpretive principles traditionally used to differentiate between exceptions and provisos. The same is not true in this case, where the exclusionary language is contained entirely within section 10-131(i)(3) itself and, under a plain reading, forms an element of the offense which the People were required to disprove” (citations omitted). See also Guide to NY Evidence rule 4.33 (Exception or Proviso).

⁶ See Guide to NY Evidence rule 4.33 (Exception or Proviso).

⁷ 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 N.Y.3d 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).

1. That on or about (date), in the County of (County), the defendant, (defendant's name), was not authorized pursuant to law to possess a firearm;
2. That the defendant unlawfully
Select applicable alternative(s):
sold, exchanged, gave or disposed of

a firearm to another individual;
3. That individual was [or reasonably appeared to be] less than 19 years of age and was not licensed pursuant to law to possess a firearm; and
4. That the firearm was 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.