

18.16
Issues In Unlawful Sale Or Delivery Of Firearms

To sustain the charge of unlawful sale or delivery of firearms, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another;
and

Second Proposition: That the firearm was of a size which may be concealed upon a person; and

Third Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

Fourth Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age.

[or]

[2] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another;
and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was under 21 years of age; and

Third Proposition: That the defendant knew the person to whom he [(sold) (gave)] the firearm had been [(convicted of a misdemeanor other than a traffic offense) (adjudged delinquent)].

[or]

[3] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another;
and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was a narcotic addict; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was a narcotic addict.

[or]

[4] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another;
and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm had been convicted of the offense of _____; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been convicted of the offense of _____.

[or]

[5] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm had been a patient in a mental [(hospital) (institution)] within the past 5 years; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been a patient in a mental [(hospital) (institution)] within the past 5 years.

[or]

[6] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was intellectually disabled; and

Third Proposition: That the defendant knew the person to whom he [(sold) (gave)] the firearm was intellectually disabled.

[or]

[7] *First Proposition:* That the defendant knowingly delivered, incidental to a sale, a firearm of a size which may be concealed upon the person; and

Second Proposition: That the defendant delivered the firearm within 72 hours after application for its purchase had been made.

[or]

[8] *First Proposition:* That the defendant knowingly delivered, incidental to a sale, a [(rifle) (shotgun) (other long gun) (stun gun) (taser)]; and

Second Proposition: That the defendant delivered such [(rifle) (shotgun) (other long gun) (stun gun) (taser)] within 24 hours after application for its purchase had been made.

[or]

[9] *First Proposition:* That the defendant knowingly [(manufactured) (sold) (delivered)] to an unlicensed person a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of a zinc alloy or other nonhomogeneous metal which melts or deforms at a temperature of less than 800 degrees Fahrenheit; and

Second Proposition: That the defendant held a license under the federal Gun Control Act of 1968 as [(a)(an)] [(dealer) (importer) (manufacturer) (pawnbroker)].

[or]

[10] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

Third Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age; and

Fourth Proposition: That the person to whom the defendant [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card; and

Fifth Proposition: That the defendant knew that the person to whom he [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card.

[or]

[11] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

Second Proposition: That the defendant was engaged in the business of selling firearms [(wholesale) (retail)]; and

Third Proposition: At the time the defendant was not licensed as a federal firearms dealer under the federal Gun Control Act of 1968.

[or]

[12] *First Proposition:* That the defendant [(sold) (transferred)] ownership of a firearm to another; and

Second Proposition: That the person to whom the defendant [(sold) (transferred)] ownership of the firearm did not display to defendant a currently valid Firearms Owner's Identification Card previously issued in that person's name by the Department of State Police.

[or]

[13] *First Proposition:* That the defendant was not entitled to possession of the firearm; and

Second Proposition: That the defendant delivered the firearm; and

Third Proposition: That the defendant knew the firearm was stolen or converted.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that _____, you should find the defendant not guilty.]

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/24-3 (West 2013), amended by P.A. 88-680, effective January 1, 1995, amended by P.A. 93-162, effective July 10, 2003, adding paragraph [11], amended by P.A. 93-906, effective August 11, 2004, adding paragraph [12], amended by 94-6, effective June 3, 2005, adding “stun gun” and “taser” to paragraph [8], amended by P.A. 97-347, effective January 1, 2012, adding paragraph [13], amended by P.A. 97-1167, effective June 1, 2013, substituting “institution” for “hospital” in paragraph [5] and defining “mental institution” and “patient in a mental institution”.

Give Instruction 18.15.

When applicable, give Instruction 18.35G, defining “firearm”.

When applicable, give Instruction 18.35I, defining “handgun”.

When applicable, give Instruction 18.35K, defining “mental institution”.

When applicable, give Instruction 18.35L, defining “patient in a mental institution”.

When applicable, give Instruction 18.35M, defining “person engaged in the business”.

When applicable, give Instruction 18.35N, defining “with the principal objective of livelihood and profit”.

Use the word “hospital” in paragraph [5] for offenses committed before June 1, 2013. Use the word “institution” in paragraph [5] for offenses committed on or after June 1, 2013.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.15.

See Committee Note to Instruction 18.15 for appropriate use of the bracketed phrase “other long gun” and the need for additional definition instructions.

Insert in the blank in the Third Proposition in the second set of propositions the misdemeanor conviction other than a traffic offense.

Insert in the blank in the Second Proposition in the fourth set of propositions the felony conviction.

Section 24-3, in part, provides that a person commits the offense of unlawful sale of firearms when he knowingly transfers a firearm to a person prohibited from possessing a firearm by reason of age, mental condition, prior convictions, or prior adjudication of delinquency. While Section 24-3 does require the mental state of knowledge, it does not indicate precisely which elements of the offense require knowledge on the part of the defendant. The statute appears to require that the transfer of the firearm be knowingly made but is less clear as to whether the defendant must also have knowledge of the status of the transferee as underage, a former mental patient, intellectually disabled, or possessing a prior conviction or adjudication of delinquency. Section 4-3 provides that where, as here, a statute defining an offense prescribes a mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each element of the offense. Since the status of the transferee is an element of the crime under Section 24-3, the Committee is of the opinion that Section 4-3 requires the defendant to have knowledge of that status at the time the firearm is transferred. Therefore, this instruction includes a requirement that the State prove that the defendant had knowledge of the relevant status of the person to whom the firearm was transferred. While the Committee is of the opinion that Sections 4-3 and 24-3 require this result, the Committee is not aware of any reported decision discussing the issue.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.