

**18.44**  
**Issues In Gunrunning**

To sustain the charge of gunrunning, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly transferred three or more firearms; and

*Second Proposition:* That when the defendant transferred these firearms, he did so in the following way[s]:

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

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

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

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

[or]

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

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

*Third:* That the defendant knew that the person to whom he [ (sold) (gave) ] the firearm was under 21 years of age; and

*Fourth:* That the person to whom the defendant [ (sold) (gave) ] the firearm had been [ (convicted of the offense of \_\_\_\_ ) (adjudged delinquent) ]; and

*Fifth:* That the defendant knew that the person to whom he [ (sold) (gave) ] the firearm had been [ (convicted of the offense of \_\_\_\_ ) (adjudged delinquent) ].

[or]

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

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

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

[or]

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

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

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

[or]

[E] *First:* That the defendant knowingly [ (sold) (gave) ] a firearm to another; and  
*Second:* That the person to whom the defendant [ (sold) (gave) ] the firearm had been a patient in a mental hospital within the past 5 years; and  
*Third:* That the defendant knew that the person to whom he [ (sold) (gave) ] the firearm had been a patient in a mental hospital within the past 5 years.

[or]

[F] *First:* That the defendant knowingly [ (sold) (gave) ] a firearm to another; and  
*Second:* That the person to whom the defendant [ (sold) (gave) ] the firearm was mentally retarded; and  
*Third:* That the defendant knew the person to whom he [ (sold) (gave) ] the firearm was mentally retarded.

[or]

[G] *First:* That the defendant knowingly delivered, incidental to a sale, a firearm of a size which may be concealed upon the person; and  
*Second:* That the defendant delivered such firearm within 72 hours after application for its purchase had been made.

[or]

[H] *First:* That the defendant knowingly delivered, incidental to a sale, a [ (rifle) (shotgun) [or other long gun]]; and  
*Second:* That the defendant delivered such [ (rifle) (shotgun) [or other long gun]] within 24 hours after application for its purchase had been made.

[or]

[I] *First:* 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 nonhomogenous metal which melts or deforms at a temperature of less than 800 degrees Fahrenheit; and  
*Second:* That the defendant held a license under the Federal Gun Control Act of 1968 as a[n] [ (dealer) (importer) (manufacturer) (pawnbroker) ].

[or]

[J] *First:* That the defendant knowingly [ (sold) (gave) ] a firearm to another; and  
*Second:* That the person to whom the defendant [ (sold) (gave) ] the firearm was under 18

years of age; and

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

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

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

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

720 ILCS 5/24-3A (West, 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.43.

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 18.43.

See Committee Note to Instruction 18.43 for appropriate use of the bracketed phrase “or other long gun” and the need for additional definition instructions.

Insert in the blank in the Fourth and Fifth Propositions in the second set of propositions (alternative [B] ) the misdemeanor conviction other than a traffic offense.

Insert in the blank in the Second and Third Propositions in the fourth set of propositions (alternative [D] ) the felony conviction.

The offense of gunrunning defined in Section 24-3A requires violations of Section 24-3 which, 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, mentally retarded, or possessing a prior conviction or adjudication of delinquency. Section 4-3 of the Criminal Code 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. See 720 ILCS 5/4-3 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §4-3 (1991)). Because the status of the transferee is an element of the crime under Section 24-3, the Committee believes 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 believes 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 letters 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. See Instruction 5.03.