

**UNLAWFUL WEARING OF A BODY VEST**  
**Penal Law § 270.20(1)**  
**(Committed on or after Nov. 1, 2001)**  
**(Revised September 19, 2003)<sup>1</sup>**

The (specify) count is Unlawful Wearing of a Body Vest.

Under our law, a person is guilty of the Unlawful Wearing of a Body Vest when acting either alone or with one or more persons, he or she commits any violent felony offense...<sup>2</sup> while knowingly <sup>3</sup> possessing a firearm, [rifle] [*or* shotgun] and in the course of and in furtherance of such crime that person wears a body vest.

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

A violent felony offense is and includes: (specify). A person is guilty of (specify) when that person (specify definition of the offense).

A FIREARM means any pistol or revolver.<sup>4</sup> Under this count, the firearm need not be loaded but it must be operable. To be operable, a firearm must be capable of discharging

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<sup>1</sup> The charge was revised to include "rifle and shotgun" as set forth in the 2001 amendment to Penal Law § 270.20(1).

<sup>2</sup> The words "defined in section 70.02" have been omitted. Penal Law § 270.20(1).

<sup>3</sup> The word "knowingly" has been added to this definition to comport with statutory law (Penal Law § 15.05(2)) and with case law. *People v. Ford*, 66 NY2d 428, 440 (1985); *People v. Marino*, 212 AD2d 735, 736 (2d Dept. 1995). *People v. Cohen*, 57 AD2d 790 (1st Dept. 1977).

<sup>4</sup> See Penal Law § 265.00(3); and Donnino, Supp Practice Commentaries, McKinney's Cons Laws of NY, Penal Law § 270.20, 2002 Pocket Part, at 51. If the "firearm" involved is not a pistol or revolver but is a weapon included in the statutory definition of "firearm," see the "Additional Charges" section at the end of Penal Law article 265 for the appropriate definition and substitute it.

ammunition.

[A RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.<sup>5]</sup>

[A SHOTGUN means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade, to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.<sup>6]</sup>

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>7</sup>

A person KNOWINGLY possesses a firearm, [rifle], [shotgun], when that person is aware that he or she is in possession of such firearm, [rifle], [shotgun].<sup>8</sup>

A BODY VEST is a bullet-resistant soft body armor providing, as a minimum standard, the level of protection known as threat level I which shall mean at least seven layers of bullet-resistant material providing protection from three shots of one hundred fifty eight grain lead ammunition fired from a .38 calibre

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<sup>5</sup> See Penal Law § 265.00(11) and Donnino, *supra*.

<sup>6</sup> See Penal Law § 265.00(12) and Donnino, *supra*.

<sup>7</sup> See Penal Law § 10.00(8). If “constructive possession” or a statutory presumption is applicable, see “Additional Charges” section at the end of Penal Law article 265 for the appropriate charge and insert it here.

<sup>8</sup> See Penal Law § 15.05(2). For an expanded definition of “knowingly,” see General Charges, Culpable Mental States, Knowingly.

handgun at a velocity of eight hundred fifty (850) feet per second.<sup>9</sup>

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

1. That on or about (date), in the county of (county), the defendant, (defendant's name), acting alone or with one or more persons, committed (specify violent felony), while knowingly possessing a firearm; and
2. That the firearm [rifle] [or shotgun] was operable; and
3. That in the course of and in furtherance of (specify violent felony) the defendant wore a body vest.

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.

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<sup>9</sup> See Penal Law § 270.20(2).