

UNLAWFUL WEARING OF BODY ARMOR
Penal Law § 270.20
(Committed on or after July 6, 2001)

The (specify) count is Unlawful Wearing of Body Armor.

Under our law, a person is guilty of the Unlawful Wearing of Body Armor when acting either alone or with one or more persons, he or she commits any violent felony offense¹ while knowingly ² possessing a firearm, [rifle] [or shotgun] and in the course of and in furtherance of such crime that person wears body armor.

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

¹ The words “defined in section 70.02” have been omitted. Penal Law § 270.20(1).

² The word “knowingly” has been added to this definition to comport with statutory law (Penal Law § 15.05(2)) and with case law. Knowingly has been added to the definition to accord with the dictates of Penal Law § 15.15(2). *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); *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (“to be convicted of criminal possession of a weapon for possessing a gravity knife . . . defendants must know that they possessed a knife” but the People are required “to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife”); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) (“The People did not have to prove that defendant was aware of the statutory definition of a blackjack to satisfy the knowledge element”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“The People were not required to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

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.³ Under this definition, the firearm need not be loaded.

[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 to fire only a single projectile through a rifled bore for each single pull of the trigger using either: (a) fixed metallic cartridge; or (b) each projectile and explosive charge are loaded individually for each shot discharged. [In addition to common, modern usage, rifles include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fire a single projectile with each discharge, or loading, including muzzle loading rifles, flintlock rifles, and black powder rifles].⁴]

[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 to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger using either: (a) a fixed shotgun shell; or (b) a projectile or number of ball shot and explosive charge are loaded individually for each shot discharged. [In addition to common, modern usage, shotguns include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fires ball shot with each discharge,

³ See Penal Law § 265.00(3). 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.

⁴ See Penal Law § 265.00(11). The “in addition” sentence in brackets may be omitted if not supported by the evidence.

or loading, including muzzle loading shotguns, flintlock shotguns, and black powder shotguns].⁵

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁶

A person KNOWINGLY possesses a (specify), when that person is aware that he or she is in possession of an object that is (specify).⁷ That person need not know (that is, be aware of) the object's name or that it meets the legal definition of a semiautomatic rifle.⁸

Under this count, (specify) need not be loaded but it must be operable. To be operable, (specify) must be capable of discharging ammunition. The person who possesses the (specify) is not required to know that it was operable.⁹

⁵ See Penal Law § 265.00(12). The “in addition” sentence in brackets may be omitted if not supported by the evidence.

⁶ 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.

⁷ See Penal Law § 15.05(2). For an expanded definition of “knowingly,” see General Charges, Culpable Mental States, Knowingly.

⁸ Penal Law § 15.05(2). See footnote 2; and for example: *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) [“Contrary to defendant's contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make ‘the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition’ (*People v Wood*, 58 AD3d 242, 251 [2008]; see *People v Persce*, 204 NY 397, 402 [1912]). Accordingly, the People did not have to prove that defendant was aware of the statutory definition of a blackjack to satisfy the knowledge element of criminal possession of a weapon in the third degree (see *People v Parrilla*, 27 NY3d at 404).”

⁹ 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

BODY ARMOR means any product that is a personal protective body covering intended to protect against gunfire, regardless of whether such product is to be worn alone or is sold as a complement to another product or garment.¹⁰

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 (specify weapon);
2. That the (specify weapon) was an operable (firearm/rifle/shotgun), meaning it was capable of discharging ammunition; and
3. That in the course of and in furtherance of (specify violent felony) the defendant wore body armor.

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.

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).

¹⁰ See Penal Law § 270.20(2).