

UNLAWFUL USE OF BODY VESTS
N.J.S.A. 2C:39-13

The defendant is charged in the indictment with the crime of unlawful use of a body vest. The statute upon which this charge is based states in pertinent part:

A person is guilty of a crime if he uses or wears a body vest while engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit **[choose appropriate]** murder, manslaughter, robbery, sexual assault, burglary, kidnapping, criminal escape or assault . . .¹

In order to find the defendant guilty of this crime, the State must prove beyond a reasonable doubt the following elements:

- 1). That defendant was engaged in the commission of², or an attempt to commit, or flight after committing or attempting to commit [crime alleged], and
- 2). That while engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit [crime alleged], defendant was using or wearing a body vest.

The first element that the State must prove beyond a reasonable doubt is that defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit [crime alleged]. I have already defined the elements of [predicate crime(s)], which defendant is accused of having committed [or attempted to commit], in my instructions concerning count(s) _____ **[if applicable add:]** as well as the included offenses of [predicate crime(s)] that you have a right to consider.³

The second element that the State must prove beyond a reasonable doubt is that while

¹The assault set forth in the statute must be as defined in N.J.S.A. 2C:12-1b.

²Delete language relating to attempt or flight throughout the charge if not applicable. Cf. State in the Interest of J.R., 234 N.J. Super. 388 (Ch. Div. 1988). If attempt is applicable, see Model Jury Charge on attempt (N.J.S.A. 2C:5-1).

³If the defendant is accused of using or wearing a body vest while engaged in a first degree crime, and included offenses of that crime are also being submitted, the jury must be instructed that it must unanimously agree as to which crime, if any, the State has proven beyond a reasonable doubt. Such a unanimous verdict is necessary to determine whether defendant, upon conviction, would be exposed to a second or third degree sentence for this offense.

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engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit [crime alleged], defendant was using or wearing a body vest. A body vest is defined as a bullet-resistant body armor which is intended to provide ballistic and trauma protection.

If you find that the State has proven both elements of the crime beyond a reasonable doubt, then you must find defendant guilty of the charge. If you find that the State has failed to prove any element of the crime beyond a reasonable doubt, then you must find defendant not guilty of the charge.