

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of a request that “forensic science technician, ballistics examiner” be designated as an eligible profession for the purchase, sale, and use of body armor.

Date of designation: December 22, 2023

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.¹ Pursuant to Executive Law section 144-a, the Department of State (Department) has established criteria for eligible professions requiring the use of body armor, as such term is defined in subdivision 2 of section 270.20 of the Penal Law. Designation of an eligible profession must be supported by a finding that the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor.² The Department may add a profession to the list of eligible professions requiring the use of body armor.³

Findings of fact and analysis

The law implementing restrictions on the use of body armor in New York State provides the eligible profession framework for lawful use of body armor,⁴ which is codified in part in section 270.21 of the Penal Law. Under that law, eligible professions shall include those in which the duties of such profession may expose the individual to serious physical injury that may be prevented or mitigated by the wearing of body armor.

A “profession” refers to any occupation or line of work referenced or included within a category identified in the Standard Occupational Classification Manual published by the federal Office of Management and Budget (SOC Manual), or as otherwise described in a federal, state, or local statute or regulation.⁵ The profession of “forensic science technician” is listed in the 2018 federal Office of Management and Budget Standard Occupational Classification Manual, under code 19-4092 titled “Forensic Science Technicians.” The SOC Manual describes the profession’s duties as:

¹ New York Penal Law § 270.21.

² New York Executive Law § 144-a; 19 NYCRR §§ 905.3, 905.1(c), (f).

³ 19 NYCRR §§ 905.2(a), 905.5(a).

⁴ L.2022, ch.210, as amended by L.2022, ch.371, §§ 11–13.

⁵ 19 NYCRR 905.1(f).

Collect, identify, classify, and analyze physical evidence related to criminal investigations. Perform tests on weapons or substances, such as fiber, hair, and tissue to determine significance to investigation. May testify as expert witnesses on evidence or crime laboratory techniques. May serve as specialists in area of expertise, such as ballistics, fingerprinting, handwriting, or biochemistry.

Illustrative examples: Ballistics Expert, Crime Scene Technician, Trace Evidence Technician

The profession of forensic science technician does not require a license from the State, nor is the profession defined in state law. Job postings for the position of forensic science technician by county forensic laboratories in New York State, as well as by federal forensic laboratories, that require analyzing evidence involving ballistics, typically require a bachelor's degree or higher, with a subject matter focus on or courses taken in natural or forensic science, and either a certain number of years of professional experience or a commitment to successful completion of on-site training. Those position descriptions list several duties, which, in relation to the handling of firearms, can include: disassembling and reassembling firearms, making firearms safe, testing firearms, inspecting firearms for identification and documentation, restoration of serial numbers and other markings on firearms, measurement of projectile velocity, examination of spent bullets and casings, and storing of firearms.

To carry out any of these listed duties, a forensic science technician whose duties include analyzing evidence involving ballistics, would need to handle, inspect, or use firearms, which may expose that individual to live fire situations. As such, the profession of forensic science technician, ballistics examiner sometimes requires individuals to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

Determination

The information set forth above supports a determination by the Department that the duties of the profession of forensic science technician, ballistics examiner sometimes require individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

For the purposes of this determination, the profession of forensic science technician shall include positions with the title of technician, expert, examiner, and/or scientist, where (1) the individual is employed at a forensics laboratory and performs firearms/ballistics examinations and (2) such forensics laboratory is defined under Executive Law § 995(1) and accredited pursuant to 9 NYCRR Part 6190, or is defined as a "Forensic Science Service Provider" as used by the National Commission on Forensic Science⁶ and is accredited to a minimum of ISO/IEC 17025 standards.

⁶ National Commission on Forensic Science, Recommendation, Universal Accreditation, footnote 1 (Jan. 13, 2015). "A person or entity that [(1) recognizes, collects, analyzes, or interprets physical evidence AND (2) issues test or examination results, provides laboratory reports, or offers interpretations, conclusions, or opinions through testimony with respect to the analysis of such evidence." Available at

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the profession of forensic science technician, ballistics examiner as an eligible profession for the purchase, sale, and use of body armor and adds such profession to the Department's list of eligible professions.

https://www.justice.gov/sites/default/files/ncfs/pages/attachments/2015/01/21/universal_accreditation_-_final1.13.15.pdf.

See also US Office of the Attorney General, Memorandum for Heads of Department Components, at 2 (Nov. 15, 2015), available at <https://www.justice.gov/ncfs/file/799001/download>.