

CARRYING CERTAIN DANGEROUS WEAPONS

G.L. c. 269, § 10(b)

The defendant is charged with unlawfully carrying a [name of weapon
alleged].

To prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the item involved is a:

(stiletto)

(dagger)

(device or case which enables a knife with a locking blade to be drawn at a locked position)

(ballistic knife)(knife with a detachable blade capable of being propelled by any mechanism)

(dirk knife)

(knife with a double-edged blade)

(knife with an automatic spring release device by which the blade is released from the handle, with a blade of over one and one-half inches)

(slung shot)

(blowgun)

(blackjack)

(metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic

knuckles)

(nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather)

(shuriken or any similar pointed starlike object intended to injure a person when thrown)

(armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance)

(cestus or similar material weighted with metal or other substance and worn on the hand)

(manrikigusari or similar length of chain having weighted ends)

***Second:* That the defendant carried the item (on their person)**

(under their control in a vehicle); and

***Third:* That the defendant knew that they were carrying the item (on their person) (under their control in a vehicle).**

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the item is a [name of weapon alleged].

Trial judge should consider whether a further definition is necessary. See note 3 below.

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant carried the [name of weapon]

alleged] (on their person) (under their control in a vehicle). To prove that the defendant carried the weapon, the Commonwealth must show that the defendant had more than momentary possession of the weapon and moved it from one place to another.

Commonwealth v. Seay, 376 Mass. 735, 737 (1978).

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew that they (were carrying a) (had under their control in a vehicle a) [name of weapon alleged]. This requires you to make a decision about the defendant's state of mind at that time. You may examine the defendant's actions and words, all of the surrounding circumstances, and any reasonable inferences, to help you determine the extent of the defendant's knowledge at the time.

This model instruction covers the offense set out in the first clause of G.L. c. 269, § 10(b). See Instruction 7.700 (Carrying a Dangerous Weapon When Arrested) for the offense set out in the second clause of § 10(b).

NOTES:

- 1. Advance notice of defense based on exemption.** A defendant may not rely on a defense based on a license, exemption, or claim of authority or ownership unless he or she has filed an advance notice of such defense with the court and the prosecutor. For cause shown, the judge may allow late filing or a continuance, or may make other appropriate orders. Mass. R. Crim. P. 14(b)(3).
- 2. Switchblades.** In *Commonwealth v. Canjura*, 494 Mass. 508, 511 (2024), the Supreme Judicial Court held that the portion of G.L. c. 269, § 10(b) that prohibits carrying a switchblade knife is unconstitutional. "Second Amendment protections subsume more than just firearms. Indeed, 'the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.'" *Commonwealth v. Canjura*, 494 Mass. 508, 511

(2024), quoting *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008). See also *Caetano v. Massachusetts*, 577 U.S. 411, 411-412 (2016) (per curiam) (stun guns constitute arms under Second Amendment). In *Canjura*, the SJC applied the two-part analytical framework of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022) to a switchblade knife, “first examin[ing] whether a switchblade is an ‘arm’ under the plain text of the Second Amendment” and “then analyz[ing] whether the Commonwealth has demonstrated § 10 (b)’s prohibition against carrying a switchblade is consistent with this nation’s historical tradition of arms regulation.” *Id.* The Court held first that a switchblade is an “arm” under the plain text of the Second Amendment, and second that the Commonwealth did not meet its burden of identifying analogous regulations of switchblade knives in place at the time of the country’s founding or the ratification of the Fourteenth Amendment. *Id.* at 511-518. The Court also held that switchblade knives are in “common use” today and are not considered “dangerous and unusual,” while noting that the Supreme Court has not clarified how the “common use” standard fits within *Bruen*’s two-part framework. *Id.* at 515-516 & n.10. The Court declined to opine on the constitutionality of the prohibitions on any of the other weapons contained in § 10(b). *Id.* at 518, n.14.

3. Nature of the weapon. The purpose of c. 269, § 10(b) is “to outlaw the carrying of those knives which are primarily designed for stabbing human beings or for other unlawful objectives.” On a motion for required finding, the court must determine whether the weapon qualifies as one of those prohibited by the statute. See *Commonwealth v. Miller*, 22 Mass. App. Ct. 694, 696 (1986). (finding motion for required finding improperly denied, where weapon did not definition of a “dirk knife”). See also *Commonwealth v. Higgins*, 85 Mass. App. Ct. 534, 536-538 (2014) (insufficient evidence that the defendant’s knife fell within one of the designated categories outlawed by the statute). Where the weapon in question is admitted as an exhibit, the jury may conclude based on their own observations whether it fell within the alleged statutory category. See *Commonwealth v. Fancy*, 349 Mass. 196, 204 (1965); *Commonwealth v. Stallions*, 9 Mass. App. Ct. 23, 25-26 (1980).