

**CRIMINAL FACILITATION
SECOND DEGREE
(C Felony)
(Facilitation of a class A felony)
PENAL LAW 115.05
(Committed on or after Sept. 1, 1978)**

The _____ count is Criminal Facilitation in the Second Degree.

Under our law, a person is guilty of Criminal Facilitation in the Second Degree when, believing it probable that he or she is rendering aid to a person who intends to commit a class A felony, he or she engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such class A felony.

The term "intends" used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

INTENT means conscious objective or purpose.¹ Thus, a person INTENDS to commit a class A felony when that person's conscious objective or purpose is to commit a class A felony.

Under our law, a person commits the class A felony of (specify the committed class A felony) when that person (read the applicable portion of the statutory definition of the committed class A felony).

Under our law, it is no defense to a prosecution for criminal facilitation that the defendant is not guilty of the class A felony which he/she facilitated because he/she did not act with the intent or other culpable mental state required for the commission

¹ See Penal Law § 15.05(1). An "expanded" definition of "intent" is available in the General Charges section under Culpable Mental States.

thereof.²

[NOTE: Add if appropriate:

Under our law, it is no defense to a prosecution for criminal facilitation that the person facilitated was not guilty of the underlying class A felony owing to criminal irresponsibility or legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or to other factors precluding the mental state required for the commission of such class A felony.³]

[NOTE: Add if appropriate:

Under our law, it is no defense to a prosecution for criminal facilitation that the person facilitated has not been prosecuted for or convicted of the underlying class A felony (or has previously been acquitted of the underlying class A felony).⁴]

[NOTE: Add if appropriate:

The defendant may not be convicted of criminal facilitation in the second degree under this count upon the testimony of a person who has committed the class A felony charged to have been facilitated unless such testimony is corroborated by such other evidence as tends to connect the defendant with such facilitation.⁵]

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) , engaged in

² See Penal Law § 115.10(3).

³ See Penal Law § 115.10 (1).

⁴ See Penal Law § 115.10 (2).

⁵ See Penal Law § 115.15.

conduct which provided *(specify person facilitated)* with means or opportunity to commit the class A felony of *(specify facilitated class A felony)*;

2. That the defendant did so believing it probable both: that *(specify person facilitated)* intended to commit that crime, and that he/she, the defendant, was rendering aid to *(specify person facilitated)* to do so; and
3. That the defendant's conduct in fact aided *(specify person facilitated)* to commit that crime.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Facilitation in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Facilitation in the Second Degree as charged in the _____ count.