

**CRIMINAL POSSESSION OF A CHEMICAL WEAPON
OR BIOLOGICAL WEAPON
SECOND DEGREE
(B Felony)
PENAL LAW 490.40(1)
(Committed on or after July 23, 2004)**

The _____ count is Criminal Possession of a Chemical Weapon or Biological Weapon in the Second Degree.

Under our law, a person is guilty of Criminal Possession of a Chemical Weapon or Biological Weapon in the Second Degree when he or she possesses

Select the appropriate alternative(s):

any chemical weapon [or]
any biological weapon

with intent to use such weapon to cause serious physical injury to, or the death of, another person;

and

Select the appropriate alternative(s):

intimidate or coerce a civilian population;

influence the policy of a unit of government by intimidation or coercion; [or]

affect the conduct of a unit of government by murder, assassination, or kidnapping.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "possess," ["chemical weapon,"] ["biological weapon,"] "intent" and "serious physical injury."

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹

[CHEMICAL WEAPON means the following, together or separately:

a toxic chemical² or its precursors³;

a munition or device specifically designed to cause death or other harm through the toxic properties of a toxic chemical or its precursors, which would be released as a result of the employment of such munition or device;

any equipment specifically designed for use directly in connection with the employment of munitions or devices; or

any device that is designed to release radiation or radioactivity at a level dangerous to human life]

[BIOLOGICAL WEAPON means any biological agent⁴, toxin⁵,

¹ See Penal Law § 10.00(8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction from the "Additional Charges" section at the end of this chapter.

² If "toxic chemical" is at issue, the charge should be expanded to include the definition of that term set forth in Penal Law § 490.05(13).

³ If "precursors" is at issue, the charge should be expanded to include the definition of that term set forth in Penal Law § 490.05(11).

⁴ If "biological agent" is at issue, the charge should be expanded to include the definition of that term set forth in Penal Law § 490.05(5).

⁵ If "toxin" is at issue, the charge should be expanded to include the definition of that term set forth in Penal Law § 490.05(6).

vector⁶, or delivery system⁷ or combination thereof]

INTENT means conscious objective or purpose.⁸ Thus, a person acts with intent to use a

Select the appropriate alternative(s):

any chemical weapon [or]
any biological weapon weapon

to cause serious physical injury to, or the death of, another person and

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affect the conduct of a unit of government by murder, assassination, or kidnapping

when his or her conscious objective or purpose is to do so.

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss

⁶ If "vector" is at issue, the charge should be expanded to include the definition of that term set forth in Penal Law § 490.05(8).

⁷ If "delivery system" is at issue, the charge should be expanded to include the definition of that term set forth in Penal Law § 490.05(7).

⁸ See Penal Law § 15.05(1).

or impairment of the function of any bodily organ.⁹

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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name) possessed

Select the appropriate alternative(s):

any chemical weapon [or]
any biological weapon; and

2. That the defendant did so with the intent to use such weapon to cause serious physical injury to, or the death of, another person; and

Select the appropriate alternative(s):

intimidate or coerce a civilian population;

influence the policy of a unit of government by intimidation or coercion; [or]

affect the conduct of a unit of government by murder, assassination, or kidnapping.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Chemical Weapon or Biological Weapon in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not

⁹ See Penal Law § 10.00(10).

proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Chemical Weapon or Biological Weapon in the Second Degree as charged in the _____ count.