

**CRIMINAL POSSESSION OF A CHEMICAL WEAPON  
OR BIOLOGICAL WEAPON  
SECOND DEGREE  
(B Felony)  
PENAL LAW 490.40(2)  
(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:*

any chemical weapon [or]  
any biological weapon

with intent to use such weapon to cause serious physical injury to, or the death of, more than two persons.

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.<sup>1</sup>

[CHEMICAL WEAPON means the following, together or separately:

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<sup>1</sup>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.

a toxic chemical<sup>2</sup> or its precursors<sup>3</sup>;  
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 agent<sup>4</sup>, toxin<sup>5</sup>, vector<sup>6</sup>, or delivery system<sup>7</sup> or combination thereof]

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

*Select the appropriate alternative(s):*

any chemical weapon [or]  
any biological weapon

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<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> See Penal Law § 15.05(1).

weapon to cause serious physical injury to, or the death of, another person 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 or impairment of the function of any bodily organ.<sup>9</sup>

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 a

*Select the appropriate alternative(s):*

any chemical weapon [or]  
any biological weapon 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, more than two persons.

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 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

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<sup>9</sup> See Penal Law § 10.00(10).

in the Second Degree as charged in the \_\_\_\_\_ count.