

**CRIMINAL POSSESSION OF A CHEMICAL WEAPON
OR BIOLOGICAL WEAPON
FIRST DEGREE
(A-I Felony)
PENAL LAW 490.45(2)
(Committed on or after July 23, 2004)**

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

Under our law, a person is guilty of Criminal Possession of a Chemical Weapon or Biological Weapon in the First Degree when he or she possesses any select chemical agent with intent to use such agent to cause serious physical injury to, or the death of, more than two other 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,” “select chemical agent,” “intent” and “serious physical injury.”

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

SELECT CHEMICAL AGENT means an identified chemical weapon, including *(specify)*.²

¹See 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 See Penal Law § 490.05(15) which refers to “a chemical weapon which has been identified in regulations promulgated pursuant to subdivision twenty of section two hundred six of the public health law.” If “chemical weapon” is at issue, the charge should be expanded by adding the applicable definition set forth in Penal Law § 490.05(10).

INTENT means conscious objective or purpose.³ Thus, a person acts with intent to use any select chemical agent to cause serious physical injury to, or the death of, more than two other persons 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.⁴

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 any select chemical agent; and
2. That the defendant did so with intent to use such agent to cause serious physical injury to, or the death of, more than two other 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 First 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

³ See Penal Law § 15.05(1).

⁴ See Penal Law § 10.00(10).

in the First Degree as charged in the _____ count.