

**CRIMINAL POSSESSION OF A CHEMICAL WEAPON  
OR BIOLOGICAL WEAPON  
FIRST DEGREE  
(A-I Felony)  
PENAL LAW 490.45(3)  
(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 biological agent with intent to use such agent to cause serious physical injury to, or the death of, another person.

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 biological agent," "intent" and "serious physical injury."

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

SELECT BIOLOGICAL AGENT means an identified biological weapon, including (*specify*).<sup>2</sup>

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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.

<sup>2</sup> See Penal Law § 490.05(16) which refers to "a biological weapon which has been identified in regulations promulgated pursuant to subdivision twenty-one of section two hundred six of the public health law." If "biological weapon" is at issue, the charge should be expanded by adding the applicable definition set forth in Penal Law § 490.05(9).

INTENT means conscious objective or purpose.<sup>3</sup> Thus, a person acts with intent to use any select biological agent 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>4</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 any select biological agent; and
2. That the defendant did so with intent to use such agent to cause serious physical injury to, or the death of, another person.

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

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<sup>3</sup> See Penal Law § 15.05(1).

<sup>4</sup> See Penal Law § 10.00(10).