

**CRIMINAL USE OF A CHEMICAL WEAPON  
OR BIOLOGICAL WEAPON  
FIRST DEGREE  
(A-I Felony)  
PENAL LAW 490.55(3)  
(Committed on or after July 23, 2004)**

The \_\_\_\_\_ count is Criminal Use of a Chemical Weapon or Biological Weapon in the First Degree.

Under our law, a person is guilty of Criminal Use of a Chemical Weapon or Biological Weapon in the First Degree when with intent to cause serious physical injury to, or the death of, another person, he or she uses, deploys, releases, or causes to be used, deployed, or released any select biological agent and thereby causes serious physical injury to, or the death of, another person who is not a participant in the crime.

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: “select biological agent,” “intent” and “serious physical injury.”

**SELECT BIOLOGICAL AGENT** means an identified biological weapon, including (*specify*).<sup>1</sup>

**INTENT** means conscious objective or purpose.<sup>2</sup> Thus, a person acts with intent to cause serious physical injury to, or the death of, another person when his or her conscious objective or purpose is to do so.

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<sup>1</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).

<sup>2</sup> See Penal Law § 15.05(1).

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>3</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, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name) used, deployed, released, or caused to be used, deployed, or released, any select biological agent; and
2. That the defendant did so with intent to cause serious physical injury to, or the death of, another person; and
3. That the defendant thereby caused serious physical injury to, or the death of, another person who was not a participant in the 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 Use 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 any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Use 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 § 10.00(10).