

**CRIMINAL POSSESSION OF A CHEMICAL WEAPON
OR BIOLOGICAL WEAPON THIRD DEGREE
Penal Law § 490.37
(Committed on or after July 23, 2004)**

The (*specify*) count is Criminal Possession of a Chemical Weapon or Biological Weapon in the Third Degree.

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

Select the appropriate alternative(s):

any select chemical agent [or]
any select biological agent

under circumstances evincing an intent by the defendant to use such weapon to cause serious physical injury or death to another person.

The following terms used in that definition have a special meaning:

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). If necessary, an expanded definition of “possession” is available in the section on General Instructions under Possession.

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).

SELECT BIOLOGICAL AGENT means an identified biological weapon, including *(specify)*.³

INTENT means conscious objective or purpose.⁴ Thus, a person acts with intent to use a

Select the appropriate alternative(s):
any select chemical agent [or]
any select biological agent

to cause serious physical injury or death to 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.⁵

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 the appropriate alternative(s):
any select chemical agent [or]

³ 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).

⁴ See Penal Law § 15.05(1).

⁵ See Penal Law § 10.00(10).

any select biological agent ; and

2. That the defendant did so under circumstances evincing an intent to use such weapon to cause serious physical injury or death to another person.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.