

**CRIMINAL USE OF A CHEMICAL WEAPON
OR BIOLOGICAL WEAPON IN THE SECOND DEGREE
Penal Law § 490.50
(Committed on or after July 23, 2004)**

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

Under our law, a person is guilty of Criminal Use of a Chemical Weapon or Biological Weapon in the Second Degree when he or she uses, deploys, releases, or causes to be used, deployed, or released,

Select the appropriate alternative:

any chemical weapon
any biological weapon

with intent to cause serious physical injury to, or the death of, another person; and

Select the appropriate alternative(s):

intimidate or coerce a civilian population;

influence the policy of a unit of government by intimidation or coercion; [or]

affect the conduct of a unit of government by murder, assassination, or kidnapping.

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

[CHEMICAL WEAPON means the following, together or separately:

a toxic chemical¹ or its precursors²;
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,³ toxin,⁴ vector,⁵ or delivery system⁶ or combination thereof.]

INTENT means conscious objective or purpose.⁷ Thus, a person acts with intent to cause serious physical injury to, or the death of, another person and [intimidate or coerce a civilian population][influence the policy of a unit of government by intimidation or coercion][affect the conduct of a unit of government by murder, assassination, or kidnapping] when his or her conscious objective or purpose is to do so.

¹ 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).

² 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).

³ 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).

⁴ 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).

⁵ 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).

⁶ 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).

⁷ 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.⁸

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 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 the appropriate alternative:

any chemical weapon
any biological weapon; and

2. That the defendant did so with intent to cause serious physical injury to, or the death of, another person and

Select the appropriate alternative(s):

intimidate or coerce a civilian population;

influence the policy of a unit of government by intimidation or coercion;

affect the conduct of a unit of government by murder, assassination, or kidnapping.

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

⁸ See Penal Law § 10.00(10).

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.