

**CRIMINAL USE OF A CHEMICAL WEAPON
OR BIOLOGICAL WEAPON
FIRST DEGREE
(A-I Felony)
PENAL LAW 490.55(2)
(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, more than two persons, he or she uses, deploys, releases, or causes to be used, deployed, or released any select chemical agent and thereby causes serious physical injury to, or the death of, more than two persons who are not participants 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 chemical agent," "intent" and "serious physical injury."

SELECT CHEMICAL AGENT means an identified chemical weapon, including (*specify*).¹

INTENT means conscious objective or purpose.² Thus, a person acts with intent to cause serious physical injury to, or the death of, more than two persons when his or her conscious objective or purpose is to do so.

¹ 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).

² 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.³

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 chemical agent; and
2. That the defendant did so with intent to cause serious physical injury to, or the death of, more than two persons; and
3. That the defendant thereby caused serious physical injury to, or the death of, more than two persons who were not participants 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.

³ See Penal Law § 10.00(10).