

**CRIMINAL POSSESSION OF A CHEMICAL WEAPON  
OR BIOLOGICAL WEAPON IN THE SECOND DEGREE**  
**Penal Law § 490.40(1)**  
**(Committed on or after July 23, 2004)**

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

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

*Select the appropriate alternative(s):*

any chemical weapon [or]  
any biological weapon

with intent to use such weapon 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:

POSSESS means to have physical possession or otherwise

to exercise dominion or control over tangible property.<sup>1</sup>

[CHEMICAL WEAPON means the following, together or separately:

a toxic chemical<sup>2</sup> or its precursors<sup>3</sup>;

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<sup>4</sup>, toxin<sup>5</sup>, vector<sup>6</sup>, or delivery system<sup>7</sup> or combination thereof]

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<sup>1</sup>See Penal Law § 10.00(8). If necessary, an expanded definition of “possession” is available in the section on General Instructions under Possession.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

INTENT means conscious objective or purpose.<sup>8</sup> Thus, a person acts with intent to use a

*Select the appropriate alternative(s):*

any chemical weapon [or]  
any biological weapon

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

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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

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>9</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

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<sup>8</sup> See Penal Law § 15.05(1).

<sup>9</sup> See Penal Law § 10.00(10).

defendant, (defendant's name) possessed

*Select the appropriate alternative(s):*

any chemical weapon [or]  
any biological weapon; and

2. That the defendant did so with the intent to use such weapon 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.

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.