

**CRIMINAL FACILITATION  
THIRD DEGREE  
(E Felony)  
(Facilitation of a felony;  
person facilitated under 16)  
PENAL LAW 115.01  
(Committed on or after Sept. 1, 1978)**

The \_\_\_\_\_ count is Criminal Facilitation in the Third Degree.

Under our law, a person is guilty of Criminal Facilitation in the Third Degree when, believing it probable that he or she is rendering aid to a person under sixteen years of age who intends to engage in conduct which would constitute a felony, he or she, being over eighteen years of age, engages in conduct<sup>1</sup> which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony.

The term "intends" used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

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<sup>1</sup> In 2013, Penal Law § 115.20 was added, stating:

"For purposes of [Penal Law article 115], such conduct shall include, but not be limited to, making available, selling, exchanging, giving or disposing of a community gun, which in fact, aids a person to commit a crime. 'Community gun' shall mean a firearm that is actually shared, made available, sold, exchanged, given or disposed of among or between two or more persons, at least one of whom is not authorized pursuant to law to possess such firearm. 'Dispose of' shall have the same meaning as that term is defined in section 265.00 of this chapter. 'Share' and 'make available' shall, in the case of a firearm, be construed to include knowingly placing such firearm at a location accessible and known to one or more other persons."

If a "community gun" is in issue, the trial court may, to the extent it deems appropriate, incorporate some or all of the language of that statute in this charge. Whether that statute only defines "conduct" and the remaining elements, particularly the culpable mental state, must be proven, or whether that statute defines a crime of "criminal facilitation" without the culpable mental state element remains to be determined.

INTENT means conscious objective or purpose.<sup>2</sup> Thus, a person under sixteen years of age INTENDS to engage in conduct which would constitute a felony when that person's conscious objective or purpose is to engage in such conduct.

Under our law, a person commits the felony of (specify the committed felony) when that person (read the applicable portion of the statutory definition of the committed felony).<sup>3</sup>

Under our law, it is no defense to a prosecution for criminal facilitation that the defendant is not guilty of the felony which he/she facilitated because he/she did not act with the intent or other culpable mental state required for the commission thereof.<sup>4</sup>

[NOTE: Add if appropriate:

Under our law, it is no defense to a prosecution for criminal facilitation that the person facilitated was not guilty of the underlying felony owing to criminal irresponsibility or legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or to other factors precluding the mental state required for the commission of such felony.<sup>5</sup>]

[NOTE: Add if appropriate:

Under our law, it is no defense to a prosecution for criminal facilitation that the person facilitated has not been prosecuted for or convicted of the underlying felony (or has previously been

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<sup>2</sup> See Penal Law § 15.05(1). If necessary, an expanded definition of “intent” is available in the section on Instructions of General Applicability under Culpable Mental States.

<sup>3</sup> Where the defendant believed it probable that he or she was rendering aid to a person who intended to commit a felony, and that intended felony differs from the felony committed, the court also should charge the applicable portions of the statutory definition of such intended felony.

<sup>4</sup> See Penal Law § 115.10(3).

<sup>5</sup> See Penal Law § 115.10 (1).

acquitted of the underlying felony).<sup>6]</sup>

*[NOTE: Add if appropriate:*

The defendant may not be convicted of criminal facilitation in the third degree under this count upon the testimony of a person who has committed the felony charged to have been facilitated unless such testimony is corroborated by such other evidence as tends to connect the defendant with such facilitation.<sup>7]</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) , who was over eighteen years of age, engaged in conduct which provided a person under sixteen years of age, namely  (specify person facilitated) , with means or opportunity to engage in conduct which would constitute a felony<sup>8</sup>;
2. That the defendant did so believing it probable both: that  (specify person facilitated)  was a person under sixteen years of age who intended to commit a felony and that he/she, the defendant, was rendering aid to  (specify person facilitated)  to do so; and
3. That the defendant's conduct in fact aided  (specify person facilitated)  to commit the felony of  (specify the facilitated felony) .

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<sup>6</sup> See Penal Law § 115.10 (2).

<sup>7</sup> See Penal Law § 115.15.

<sup>8</sup>If the indictment or bill of particulars alleges a particular felony, the court should specify that felony in the first element.

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 Facilitation in the Third 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 Facilitation in the Third Degree as charged in the \_\_\_\_\_ count.