

CRIMINAL FACILITATION IN THE SECOND DEGREE
(Facilitation of a class A felony)
Penal Law § 115.05
(Committed on or after Sept. 1, 1978)

The (specify) count is Criminal Facilitation in the Second Degree.

Under our law, a person is guilty of Criminal Facilitation in the Second Degree when, believing it probable that he or she is rendering aid to a person who intends to commit a class A felony, he or she engages in conduct¹ which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such class A felony.

The following term used in that definition has a special meaning:

INTENT means conscious objective or purpose.² Thus, a

¹ 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, including 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.

² 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.

person INTENDS to commit a class A felony when that person's conscious objective or purpose is to commit a class A felony.

(Name of class A felony) is a class A felony. Under our law, a person commits (specify the committed class A felony) when that person (read the applicable portion of the statutory definition of the committed class A felony).

Under our law, it is no defense to a prosecution for criminal facilitation that the defendant is not guilty of the class A felony which he/she is charged with facilitating because he/she did not act with the intent or other culpable mental state required for the commission thereof.³

[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 class A 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 class A felony.⁴]

[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 class A felony (or has previously been acquitted of the underlying class A felony).⁵]

[NOTE: Add if appropriate:

The defendant may not be convicted of criminal facilitation in the second degree under this count upon the testimony of a person who has committed the class A felony charged to have been facilitated unless such testimony is corroborated by such other evidence as tends to connect the defendant with such

³ See Penal Law § 115.10(3).

⁴ See Penal Law § 115.10 (1).

⁵ See Penal Law § 115.10 (2).

facilitation.^{6]}

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), engaged in conduct which provided (specify person facilitated) with means or opportunity to commit the class A felony of (specify facilitated class A felony);
2. That the defendant did so believing it probable both: that (specify person facilitated) intended to commit that 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 that felony.

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

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

⁶ See Penal Law § 115.15.