**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

1. 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.