

ASSAULT THIRD DEGREE
(A Misdemeanor)
(Physical Injury; Reckless)
PENAL LAW 120.00(2)
(Committed on or after Sept. 1, 1967)

The _____ count is Assault in the Third Degree.

Under our law, a person is guilty of Assault in the Third Degree when that person recklessly causes physical injury to another person.

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: “physical injury” and “recklessly.”

PHYSICAL INJURY means impairment of physical condition or substantial pain.¹

A person acts RECKLESSLY with respect to physical injury when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to another person will occur,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.²

¹ See Penal Law § 10.00(9).

² See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication.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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused physical injury to (specify); and
2. That the defendant did so recklessly.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Assault 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 either one or both of those elements, you must find the defendant not guilty of the crime of Assault in the Third Degree as charged in the _____ count.

³ See Penal Law § 15.05(3).