

**ASSAULT THIRD DEGREE
(A Misdemeanor)
(Physical Injury; Criminal
Negligence; Weapon)
PENAL LAW 120.00(3)
(Committed on or after Nov. 1, 1995)¹**

The _____ count is Assault in the Third Degree.

Under our law, a person is guilty of Assault in the Third Degree when, with criminal negligence, that person causes physical injury to another person by means of a deadly weapon [*or* dangerous instrument].

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," "criminal negligence," and "deadly weapon" [*or* "dangerous instrument"].

PHYSICAL INJURY means impairment of physical condition or substantial pain.²

CRIMINAL NEGLIGENCE is not the same as that type of negligence you may be familiar with that permits a person injured by ordinary negligence to obtain a monetary judgment in a civil law suit. The carelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence.

A person acts with CRIMINAL NEGLIGENCE with respect to physical injury by means of a deadly weapon [*or* dangerous instrument] when

that person engages in conduct which creates or contributes

¹ November 1, 1995, was the effective date of an amendment to the definition of "deadly weapon" [Penal Law § 10.00(12)] to add a "metal knuckle knife." Excluding that change, this charge is applicable to crimes committed on or after November 1, 1986.

² See Penal Law § 10.00(9).

to a substantial and unjustifiable risk that physical injury to another person by means of a deadly weapon [or dangerous instrument] will occur, and

when he or she fails to perceive that risk,

and when that risk is of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.³

DEADLY WEAPON means:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

[or a switchblade knife defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.]

[or a gravity knife defined as any knife having a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.]

[or a pilum ballistic knife defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.]

[or a dagger]

[or a billy]

[or a blackjack]

[or metal knuckles]

³See Penal Law § 15.05(4); *People v. Boutin*, 75 NY2d 692, 696 (1990).

[or a metal knuckle knife].⁴

[DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,⁵ that is, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁶ Under that definition, death or other serious physical injury need not, in fact, be caused.]

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) by means of a deadly weapon [or dangerous instrument]; and
2. That the defendant did so with criminal negligence.

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 under 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

⁴See Penal Law § 10.00(12). See also, Penal Law § 265.00 for the definitions of “switchblade knife,” “gravity knife,” and “pilum ballistic knife.”

⁵See Penal Law § 10.00(13).

⁶See Penal Law § 10.00(10).

Assault in the Third Degree under the _____ count.