

**ASSAULT SECOND DEGREE**  
**(D Felony)**  
**(Serious Physical Injury; Intent)**  
**PENAL LAW 120.05(1)**  
**(Committed on or after Sept. 1, 1967)**

The \_\_\_\_\_ count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when, with the intent to cause serious physical injury to another person, he or she causes such injury to that person [*or to a third 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: "serious physical injury" and "intent."

**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.<sup>1</sup>

**INTENT** means conscious objective or purpose. Thus, a person acts with intent to cause serious physical injury to another when that person's conscious objective or purpose is to cause serious physical injury to another.<sup>2</sup>

*[NOTE: In a case of "transferred intent," add the following paragraph:*

Under our law, it is not required that the person who is injured be the same person who was intended to be injured.]

In order for you to find the defendant guilty of this crime, the

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<sup>1</sup>See Penal Law § 10.00(10).

<sup>2</sup>See Penal Law § 15.05(1).

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 serious physical injury to (specify); and
2. That the defendant did so with the intent to cause serious physical injury to (specify).

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 Second 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 Second Degree as charged in the \_\_\_\_\_ count.