

**ASSAULT SECOND DEGREE  
(D Felony)  
(Interference with Public Servants)  
PENAL LAW 120.05(3)  
(Committed on or after Nov. 1, 2010)<sup>1</sup>**

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 prevent a

Select appropriate alternative:

peace officer  
police officer  
registered nurse  
licensed practical nurse  
sanitation enforcement agent

firefighter [including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter]

emergency medical service paramedic  
emergency medical service technician  
medical or related personnel in a hospital emergency department  
city marshal  
traffic enforcement officer  
traffic enforcement agent

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<sup>1</sup> This charge has been revised to accord with the following statutory amendment: Effective November 1, 2010 (L. 2010, c.18 and L. 2010, ch. 345), the words “registered nurse,” “licensed practical nurse,” “sanitation enforcement agent,” “city marshal,” “traffic enforcement officer” and “traffic enforcement agent” were added.

from performing a lawful duty,<sup>2</sup>

he or she causes physical injury to such person.<sup>3</sup>

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: “intent” and “physical injury.”<sup>4</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to prevent a

Select appropriate alternative:

peace officer  
police officer  
registered nurse  
licensed practical nurse  
sanitation enforcement agent

firefighter (including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter)

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<sup>2</sup> At this point, the statute states “by means including releasing or failing to control an animal under circumstances evincing the actor’s intent that the animal obstruct the lawful activity of such peace officer, police officer, registered nurse, licensed practical nurse, sanitation enforcement agent, firefighter, paramedic, technician, city marshal. Traffic enforcement officer or traffic enforcement agent....” This language need only be included when specifically alleged in the indictment.

<sup>3</sup> The statute continues to repeat the various types of employees. The term person has been inserted for clarity.

<sup>4</sup> The term “lawful duty” is not defined in the Penal Law. If in issue, the term will need to be defined within the context of the facts presented. See *People v. McDonald*, 291 A.D.2d 832 (4<sup>th</sup> Dept 2002); *People v. Milhouse*, 246 A.D.2d 119 (1<sup>st</sup> Dept 1998); *People v. Greene*, 221 A.D.2d 559 (2d Dept 1995).

emergency medical service paramedic  
emergency medical service technician  
medical or related personnel in a hospital emergency department  
city marshal  
traffic enforcement officer  
traffic enforcement agent

from performing a lawful duty when that person's conscious objective or purpose is to prevent such person from performing a lawful duty.<sup>5</sup>

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>6</sup>

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), caused physical injury to (specify name of complainant);
2. That (specify name of complainant) was a (specify appropriate alternative from above); and
3. That the defendant caused such physical injury with intent to prevent (specify name of complainant) from performing a lawful duty.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Assault in the Second Degree as charged in the \_\_\_\_\_ count.

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<sup>5</sup> See Penal Law § 15.05(1).

<sup>6</sup> See Penal Law § 10.00(9).

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Assault in the Second Degree as charged in the \_\_\_\_\_ count.