

ASSAULT SECOND DEGREE
(D Felony)
(Child Assault)
PENAL LAW 120.05(8)
(Committed on or after Nov. 1, 1990)

The _____ count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when, being eighteen (18) years old or more and with intent to cause physical injury to a person less than eleven (11) years old, he or she recklessly causes serious physical injury to that 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," "serious physical injury," "intent," and "recklessly."

PHYSICAL INJURY means impairment of physical condition or substantial pain.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, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.²

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to a person less than eleven (11) years old when that person's conscious objective or purpose is to cause physical injury to a person less than eleven (11) years old.³

¹ See Penal Law § 10.00(9).

² See Penal Law § 10.00(10).

³ See Penal Law § 15.05(1).

A person acts RECKLESSLY with respect to this charge when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to a person less than eleven (11) years old 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.⁴

[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.^{5]}

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)*, recklessly caused serious physical injury to *(specify)*, a person who was at such time less than eleven (11) years old;
2. That the defendant did so with the intent to cause physical injury to such child; and

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

⁵See Penal Law § 15.05(3).

3. That the defendant was eighteen (18) years old or more.

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.

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.