

**ASSAULT SECOND DEGREE
(D Felony)
(Physical Injury; Transit Operators)
PENAL LAW 120.05(11)
(Committed on or after Nov. 1, 2003)¹**

The _____ count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when, with intent to cause physical injury to a train operator, ticket inspector, conductor or bus operator or station agent employed by any transit agency, authority or company, public or private, whose operation is authorized by New York State or any of its political subdivisions, he or she causes physical injury to such train operator, ticket inspector, conductor or bus operator while such employee is performing an assigned duty on, or directly related to, the operation of a train or bus.

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 "intent."

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

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to a train operator, ticket inspector, conductor or bus operator when that person's conscious objective or purpose is to cause physical injury to such person.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,

¹ This statute was added to the Penal Law effective November 1, 2002. A "station agent" was added to the statute effective November 1, 2003.

² See Penal Law § 10.00(9).

³ See Penal Law § 15.05(1).

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 a train operator, [ticket inspector], [conductor] [or bus operator] [or station agent] employed by any transit agency, authority or company, public or private, whose operation is authorized by New York State or any of its political subdivisions;
2. That the defendant did so while such employee was performing an assigned duty on or directly related to the operation of a train or bus; and
3. That the defendant did so with the intent to cause physical injury to such person.

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.