

**GANG ASSAULT
SECOND DEGREE
(C Felony)
PENAL LAW 120.06
(Committed on or after Nov. 1, 1996)**

The _____ count is Gang Assault in the Second Degree.

Under our law, a person is guilty of Gang Assault in the Second Degree when, with intent to cause physical injury to another person and when aided by two or more other persons actually present, he or she causes serious physical injury to such 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: "physical injury," "serious physical injury," "intent" and "actually present."

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 another when that person's conscious objective or purpose is to cause physical injury to another. ³

¹ See Penal Law § 10.00(9).

² See Penal Law § 10.00(10).

³ See Penal Law § 15.05(1).

[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.]

A person is ACTUALLY PRESENT when such person is in a position to render immediate assistance to a person participating in the assault and is ready, willing and able to do so.⁴

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 serious physical injury to (specify);
2. That the defendant did so with the intent to cause physical injury to (specify); and
3. That the defendant was aided by two or more persons actually present.

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 Gang 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 Gang Assault in the Second Degree as charged in the _____ count.

⁴ See, *People v. Dennis*, 75 NY2d 821 (1990); *People v. Hedgeman*, 70 NY2d 533,543 (1987).