

ASSAULT FIRST DEGREE
(B Felony, eff. 11-1-96)
(Disfigure, Disable)
PENAL LAW 120.10(2)
(Committed on or after Sept. 1, 1967)¹

The _____ count is Assault in the First Degree.

Under our law, a person is guilty of Assault in the First Degree when, with intent to disfigure another seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of the body of another, he or she causes such injury to that person [*or* to a third person].

The term “intent” used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

INTENT means conscious objective or purpose. Thus, a person acts with intent to disfigure seriously and permanently another person or to destroy, amputate or disable permanently a member or organ of another person's body when his or her conscious objective or purpose is to cause such injury.²

[A person is seriously disfigured when, considering the nature of the injury as well as its location and any relevant aspects of that person's overall physical appearance, a reasonable observer would find that person's altered appearance distressing or objectionable. ³]

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

¹ This charge was revised in January, 2011 to incorporate the definition of “seriously disfigured” as set forth in *People v. McKinnon*, 15 N.Y.3d 311 (2010).

² See Penal Law § 15.05(1).

³ *People v. McKinnon*, 15 N.Y.3d 311, 315 (2010).

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 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), seriously and permanently disfigured (specify), or destroyed, amputated, or disabled permanently a member or organ of (specify)'s body; and
2. That the defendant did so with the intent to disfigure (specify) seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of (specify)'s body.

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 First 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 First Degree as charged in the _____ count.