

**ASSAULT IN THE SECOND DEGREE
(Employee of Secure Treatment Facility)
Penal Law § 120.05 (13)
(Committed on or after Nov. 1, 2016)**

The (*specify*) count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when being confined to a secure treatment facility¹, and with intent to cause physical injury to an employee of such secure treatment facility performing his or her duties, he or she causes such injury to such person.

The following terms used in that definition have a special meaning:

"Secure treatment facility"² means a facility or a portion of a facility, designated by the commissioner³, [that may include a facility located on the grounds of a correctional facility,] that is staffed with personnel from the office of mental health or the office for people with developmental disabilities for the purposes of providing care and treatment to persons confined...⁴

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁵

¹ At this point, the statute states "as such term is defined in subdivision (o) of section 10.03 of the mental hygiene law." Those words are omitted here and the definition is reproduced below in the definition section.

² Defined in Mental Hygiene Law 10.03 (o).

³ Mental Hygiene Law 10.03 (b) defines "Commissioner" to mean "the commissioner of mental health or the commissioner of developmental disabilities."

⁴ At this point the statute continues "under this article, and persons defined in paragraph five of subdivision (g) of this section." Article 10 of the Mental Hygiene Law relates to "Sex Offenders Requiring Civil Commitment or Supervision." The reason the defendant was confined may not be relevant and may be more prejudicial than probative if the defendant is prepared to concede outside the presence of the jury this statutory element for his/her confinement.

⁵ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to an employee of a secure treatment facility performing his or her duties, when that person's conscious objective or purpose is to do so.⁶

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), the defendant was confined to a secure treatment facility; and
2. That on that date, in the county of (County), the defendant caused physical injury to (specify name of complainant) who was an employee of the secure treatment facility performing his/her duties; and
3. That the defendant did so with intent to cause physical injury to (specify name of complainant).

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

⁶ Penal Law § 15.05 (1).