

**ASSAULT SECOND DEGREE**  
**(D Felony)**  
**(Physical Injury; Intent; Weapon)**  
**PENAL LAW 120.05(2)**  
**(Committed on or after Nov. 1, 1995)<sup>1</sup>**

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 another person, he or she causes such injury to that person [*or* to a third person] by means of a deadly weapon [*or* a dangerous instrument].

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," "intent," and "deadly weapon" [*or* "dangerous instrument"].

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>2</sup>

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.<sup>3</sup>

*[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.]

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<sup>1</sup> November 1, 1995, was the effective date of an amendment to the definition of "deadly weapon" [Penal Law § 10.00(12)] to add a "metal knuckle knife." Excluding that change, this charge is applicable to crimes committed on or after November 1, 1986.

<sup>2</sup> Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

<sup>3</sup> See Penal Law § 15.05(1).

DEADLY WEAPON means:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

[or a switchblade knife defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.]

[or a gravity knife defined as any knife having a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.]

[or a pilum ballistic knife defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.]

[or a dagger]

[or a billy]

[or a blackjack]

[or metal knuckles]

[or a metal knuckle knife].<sup>4</sup>

[DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,<sup>5</sup> that is, serious and protracted disfigurement, protracted impairment of health or protracted loss

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<sup>4</sup> Penal Law § 10.00(12); See Penal Law § 265.00 for the definitions of "switchblade knife," "gravity knife," "pilum ballistic knife."

<sup>5</sup> Penal Law § 10.00(13).

or impairment of the function of any bodily organ.<sup>6</sup> Under that definition, death or other serious physical injury need not, in fact, be caused.]

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), caused physical injury to (specify) by means of a deadly weapon [or dangerous instrument]; and
2. That the defendant did so with the intent to cause physical injury to (specify).

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 Second 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 Second Degree as charged in the \_\_\_\_\_ count.

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<sup>6</sup> Penal Law § 10.00(10).