

**ASSAULT SECOND DEGREE
(D Felony)
(Serious Physical Injury; Reckless;
Weapon)
PENAL LAW 120.05(4)
(Committed on or after Nov. 1, 1995)¹**

The _____ count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when that person recklessly causes serious physical injury to another person by means of a deadly weapon [*or* 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: "serious physical injury," "recklessly," and "deadly weapon" [*or* "dangerous instrument"].

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

A person acts **RECKLESSLY** with respect to serious physical injury by means of a deadly weapon [*or* dangerous instrument] when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to another person by means of a deadly weapon [*or* dangerous instrument] will occur,

¹November 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.

²See Penal Law § 10.00(10).

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.³

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication.⁴]

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.]

³See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

⁴See Penal Law § 15.05(3).

[or a dagger]
[or a billy]
[or a blackjack]
[or metal knuckles]
[or a metal knuckle knife].⁵

[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.]⁶

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 serious physical injury to (specify) by means of a deadly weapon [or dangerous instrument]; and
2. That the defendant did so recklessly.

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

⁵See Penal Law § 10.00(12). See also, Penal Law § 265.00 for the definitions of “switchblade knife,” “gravity knife,” “pilum ballistic knife.”

⁶See Penal Law § 10.00(13).

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