

**ASSAULT IN THE SECOND DEGREE  
(Reckless Assault of Child by Firearm)  
Penal Law § 120.05 (4-a)  
(Committed on or after March 16, 2013)**

The (*specify*) 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 physical injury to another person who is a child under the age of eighteen by intentional discharge of a firearm [*or rifle*] [*or shotgun*].

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

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>1</sup>

A person acts RECKLESSLY with respect to causing physical injury to a child when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to a child will occur,

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.<sup>2</sup>

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<sup>1</sup> See Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

<sup>2</sup> See Penal Law § 15.05 (3); *People v Boutin*, 75 NY2d 692, 696 (1990).

*[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.<sup>3]</sup>

INTENT means conscious objective or purpose. Thus, a person INTENTIONALLY discharges a firearm [or rifle] [or shotgun] when that person's conscious objective or purpose is to discharge a firearm [or rifle] [or shotgun] .<sup>4</sup>

A FIREARM means any pistol or revolver.<sup>5</sup>

[A RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.<sup>6]</sup>

[A SHOTGUN means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade, to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.<sup>7]</sup>

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

<sup>4</sup> See Penal Law § 15.05 (1).

<sup>5</sup> Penal Law § 265.00 (3). If the firearm involved is other than a pistol or revolver, see the "Additional Charges" section at the end of the chapter for article 265, and substitute the appropriate definition.

<sup>6</sup> Penal Law § 265.00 (11).

<sup>7</sup> Penal Law § 265.00 (12).

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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), recklessly caused physical injury to (specify) by intentional discharge of a firearm [or rifle] [or shotgun]; and
2. That, at that time, (specify) was under the age of 18.

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

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