

**ASSAULT FIRST DEGREE**  
**(B Felony, eff. 11-1-96)**  
**(Serious Physical Injury; Intent; Weapon)**  
**PENAL LAW 120.10(1)**  
**(Committed on or after Nov. 1, 1995) <sup>1</sup>**

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 cause serious 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* 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," "intent," 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.<sup>2</sup>

**INTENT** means conscious objective or purpose. Thus, a person acts with intent to cause serious physical injury to another when that person's conscious objective or purpose is to cause

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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>See Penal Law § 10.00(10).

serious 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.]

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]

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<sup>3</sup>See Penal Law § 15.05(1). If necessary, an expanded definition of "intent" is available in the section on Instructions of General Applicability under Culpable Mental States.

[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>

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 with the intent to cause serious 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 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.

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

<sup>5</sup> See Penal Law § 10.00(13).