

**AGGRAVATED ASSAULT UPON A PERSON  
LESS THAN ELEVEN (11) YEARS OLD  
Penal Law § 120.12  
(Committed on or after July 29, 2013)  
Revised October 2013<sup>1</sup>**

The (*specify*) count is Aggravated Assault Upon a Person Less Than Eleven (11) Years Old.

Under our law, a person is guilty of Aggravated Assault Upon a Person Less Than Eleven Years Old when, being eighteen (18) years old or more, that person commits the crime of assault in the third degree upon a person less than eleven (11) years old.<sup>2</sup>

*NOTE: Add the appropriate Assault in the Third Degree Charge:*

Under our law, a person is guilty of assault in the third degree...]

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:

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<sup>1</sup> The statute was amended, effective July 29, 2013 (L 2013, ch 172), to increase to ten years the “look-back” period which is specified in the element of the crime set forth in footnote two. For crimes occurring between November 1, 1990 and July 29, 2013, that “look-back” period is three years.

<sup>2</sup> An additional element of this crime is that the defendant

“has been previously convicted of such crime upon a person less than eleven years old within the preceding ten years.”

That element must be charged in a special information. The defendant must be arraigned upon it in accordance with the procedure set forth in CPL 200.60 (3). If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add the element to the definition of the offense and the list of elements. (see CPL 200.60; *People v Cooper*, 78 NY2d 476 [1991]).

1. That on or about (date), in the County of (County), the defendant, (defendant's name), committed the crime of assault in the third degree, in that the defendant (specify culpable mental state) caused physical injury to (specify) [add, for criminally negligent third degree assault: by means of a deadly weapon (or dangerous instrument)];
2. That, at that time, (name of complainant) was less than eleven (11) years old; and
3. That, at that time, the defendant was eighteen (18) years old or more.<sup>3</sup>

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.

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<sup>3</sup> If the defendant has denied the previous conviction or has remained mute, add the following:

“and 4. That the defendant had been previously convicted of such crime upon a person less than eleven years old within the preceding ten years.”