

**ASSAULT IN THE FIRST DEGREE**  
**(Disfigure, Disable)**  
**Penal Law § 120.10(2)**  
**(Committed on or after Sept. 1, 1967)<sup>1</sup>**

The (*specify*) count is Assault in the First Degree.

Under our law, a person is guilty of Assault in the First Degree when, with intent to disfigure another seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of the body of another, he or she causes such injury to that person [or to a third person].

The following term used in that definition has a special meaning:

INTENT means conscious objective or purpose. Thus, a person acts with intent to disfigure seriously and permanently another person or to destroy, amputate or disable permanently a member or organ of another person's body when his or her conscious objective or purpose is to cause such injury.<sup>2</sup>

[A person is seriously disfigured when, considering the nature of the injury as well as its location and any relevant aspects of that person's overall physical appearance, a reasonable observer would find that person's altered appearance distressing or objectionable. <sup>3</sup>]

*[NOTE: In a case of "transferred intent," add the following paragraph:]*

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<sup>1</sup> This charge was revised in January, 2011 to incorporate the definition of "seriously disfigured" as set forth in *People v. McKinnon*, 15 N.Y.3d 311 (2010).

<sup>2</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.

<sup>3</sup> *People v. McKinnon*, 15 N.Y.3d 311, 315 (2010).

Under our law, it is not required that the person who is injured be the same person who was intended to be injured.]

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), seriously and permanently disfigured (specify), or destroyed, amputated, or disabled permanently a member or organ of (specify)'s body; and
2. That the defendant did so with the intent to disfigure (specify) seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of (specify)'s body.

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.