

**STRANGULATION SECOND DEGREE**  
**(D Felony)**  
**PENAL LAW 121.12**  
**(Committed on or after Nov. 11, 2010)**

The \_\_\_\_\_ count is Strangulation in the Second Degree.

Under our law, a person is guilty of Strangulation in the Second Degree when<sup>1</sup>, with intent to impede the normal breathing or circulation of the blood of another person, he or she

Select appropriate alternative:

applies pressure on the throat or neck of such person

blocks the nose or mouth of such person

and thereby causes stupor, loss of consciousness for any period of time, or any other physical injury or impairment.

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: “intent” and “physical injury.”

INTENT means conscious objective or purpose.<sup>2</sup> Thus, a person acts with the intent to impede the normal breathing or circulation of the blood of another person when his or her conscious objective or purpose is to do so.

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<sup>1</sup> At this point the statute states “he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article.” This charge substitutes the operative language of that crime.

<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.

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>3</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, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name),

Select appropriate alternative:

applied pressure on the throat or neck of (specify)

blocked the nose or mouth of (specify);

2. That the defendant did so with the intent to impede the normal breathing or circulation of the blood of such person; and
3. That the defendant thereby caused stupor, loss of consciousness for any period of time, or any other physical injury or impairment to such person.

*[NOTE: If the affirmative defense of Penal Law § 121.14 does not apply conclude as follows:*

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Strangulation 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 any one or more of those elements, you must find the defendant not guilty of the crime of

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<sup>3</sup> Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

Strangulation in the Second Degree as charged in the \_\_\_\_\_ count.]

*[NOTE: If the affirmative defense of Penal Law § 121.14 applies, omit the final two paragraphs of the above charge, and substitute the following: <sup>4</sup>*

If you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Strangulation in the Second Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt each of those elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Strangulation in the Second Degree you will not consider the affirmative defense.

Under our law, it is an affirmative defense to a prosecution for this crime that the defendant performed such conduct for a valid medical or dental purpose.

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider the evidence presented by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence,

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<sup>4</sup> The justification defense for a duly licensed physician, or a person acting under a physician's direction, as set forth in PL § 35.10(5), may also be applicable. If so, the jury should be charged accordingly.

but in terms of its quality and the weight and the convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt the elements of Strangulation in the Second Degree, you must find the defendant guilty of that crime as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Strangulation in the Second Degree as charged in the \_\_\_\_\_ count.]