

AGGRAVATED HARASSMENT SECOND DEGREE
(A Misdemeanor)
(Strikes, Shoves, Kicks with Physical Injury)
PENAL LAW 240.30 (4)
(Committed on or after December 24, 2012)¹

The _____ count is Aggravated Harassment in the Second Degree.

Under our law, a person is guilty of Aggravated Harassment in the Second Degree when, with the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks or otherwise subjects another person to physical contact thereby causing physical injury to such person or to a family or household member of such person.²

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” [and “members of the same family or household].”

INTENT means conscious objective or purpose. Thus, a

¹ Effective December 24, 2012, Penal Law § 240.30 was amended, as relevant herein, by adding a new subdivision (4) and renumbering the prior subdivision (4) as (5). Subsequent amendments to Penal Law § 240.30, made in response to the Court of Appeals holding in *People v Golb*, 23 NY3d 455 (2014), and effective July 23, 2014, do not substantively affect the version of Penal Law § 240.30 (4) that became effective as of December 24, 2012.

² At this point, the statute continues “as defined in section 530.11 of the criminal procedure law.” Because CPL 530.11 uses the language “members of the same family or household” rather than “family or household member,” the term to be defined, if applicable, should use the statutory language of CPL 530.11.

person acts with intent to harass, annoy, threaten or alarm another person when his or her conscious objective or purpose is to do so.³

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁴

MEMBERS OF THE SAME FAMILY OR HOUSEHOLD are:

Select appropriate alternative(s):

persons related by consanguinity or affinity⁵;

persons legally married to one another;

persons formerly married to one another regardless of whether they still reside in the same household;

persons who have a child in common, regardless of whether such persons have been married or have lived together at any time;

persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors [you] may consider in determining whether a

³ See Penal Law § 15.05 (1). If necessary, an “expanded” definition of “intent” is available in the charges of General Applicability under Culpable Mental States.

⁴ Penal Law § 10.00 (9); see *People v Chiddick*, 8 NY3d 445 (2007).

⁵ There is no statutory definition of “consanguinity” or “affinity.” A dictionary definition of “consanguinity” is “relationship by descent from a common ancestor” (Random House Webster’s Unabridged Dictionary [1999]). That dictionary’s definition of “affinity” is “relationship by marriage or by ties other than those of blood (distinguished from consanguinity).”

relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship."⁶

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 elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), struck, shoved, kicked, or otherwise subjected (specify) to physical contact, thereby causing physical injury to (specify) [or to a family or household member of (specify)]; and

2. That the defendant did so with the intent to harass, annoy, threaten or alarm (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 Aggravated Harassment 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 either one or both of those elements, you must find the defendant not guilty of the crime of Aggravated Harassment in the Second Degree as charged in the _____ count.

⁶ CPL 530.11 (1); see also Family Court Act § 812 (1); see generally *Jose M v Angel V*, 99 AD3d 243 (2d Dept 2012).