

**ASSAULT IN THE SECOND DEGREE
(Physical Injury; Certain Public Employees)
PENAL LAW 120.05 (11)
(Committed on or after as follows:**

November 1, 2002 [ch 598] for:
train operator, ticket inspector, conductor, signalperson, bus
operator station agent, station cleaner or terminal cleaner

November 1, 2003 [ch 607] for:
station agent

November 1, 2006 [ch 100] for:
signalperson

July 22, 2008 [ch 45] for:
city marshal, traffic enforcement officer or agent

September 12, 2010 [ch 345] for:
sanitation enforcement agent

November 1, 2010 [ch 318] for:
registered nurse, or licensed practical nurse

September 16, 2012 [ch 377] for:
New York city sanitation worker

January 27, 2014 [ch 259] for:
prosecutor

November 1, 2014 [ch 196] for:
school crossing guard

February 18, 2016 [ch 487] for:
emergency medical service paramedic, or emergency medical
service technician

November 1, 2016 [ch 281] for:
station cleaner or terminal cleaner

November 1, 2016 [ch 472] for:
public health sanitarian, New York City public health sanitarian

September 25, 2022 [ch 233]
In paragraph [1] of the definition of the offense, the people etc.
listed between asterisks were added.

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

Under our law, a person is guilty of Assault in the Second Degree when, with intent to cause physical injury to:

Select appropriate public employee status:¹

[1] a train operator, ticket inspector, conductor, signalperson, bus operator, station agent, station cleaner or terminal cleaner, *station customer assistant; person whose official duties include the sale or collection of tickets, passes, vouchers, or other revenue payment media for use on a train or bus or the collection or handling of revenues therefrom; a person whose official duties include the maintenance, repair, inspection, troubleshooting, testing or cleaning of buses, a transit signal system, elevated or underground subway tracks, transit station structure, including fare equipment, escalators, elevators and other equipment necessary to passenger service, commuter rail tracks or stations, train yard, revenue train in passenger service, or a train or bus station or terminal; or a supervisor of such personnel,*² employed by any transit *or commuter rail*² agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions,

[2] a city marshal, school crossing guard,³ a traffic enforcement officer, traffic enforcement agent, prosecutor,⁴

¹ The statute initially sets forth one group of public employees engaged in the operation of a train or bus; the remaining public employees are not necessarily related to each other in their work. The significance of the difference is that while the assault must take place while a named employee is performing an assigned duty, the employees in paragraph [1] above must be engaging in an assigned duty “on or directly related to the operation of a train or bus, cleaning of a train or bus station or terminal, assisting customers, the sale or collection of tickets, passes, vouchers, or other revenue media for use on a train or bus, or maintenance or cleaning of a train, a bus, or bus station or terminal, signal system, elevated or underground subway tracks, transit station structure, including fare equipment, escalators, elevators and other equipment necessary to passenger service, commuter rail tracks or stations, train yard or revenue train in passenger service.”

² The words between the asterisks were added by L. 2022, ch. 233, effective Sept. 25, 2022.

³ At this point, the statute specifies a “school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law. If, whether the complainant is a school crossing guard is in issue, the charge will need to be modified accordingly. General Municipal Law § 208-a states as follows: “The

sanitation enforcement agent, New York city sanitation worker, public health sanitarian,⁵ New York City public health sanitarian,⁶ registered nurse, licensed practical nurse, emergency medical service paramedic, or emergency medical service technician

he or she causes physical injury to such person⁷

while such person is performing an assigned duty

Add if public employee is one of those listed in paragraph [1] in the definition of the offense:

on, or directly related to,

Select as appropriate:

the operation of a train or bus, cleaning of a train or bus station or terminal, *assisting customers, the sale or collection of tickets, passes, vouchers, or other revenue media for use on a train or bus, or maintenance or cleaning of a train, a bus, or bus station or terminal, signal system, elevated or underground subway tracks, transit station structure, including fare equipment, escalators, elevators and other equipment necessary to passenger

duly constituted authorities of any city, town, or village or any county police department or police district may designate, authorize and appoint such a number of persons as such authority shall deem necessary, and at such salaries as such authority shall deem advisable, as school crossing guards to aid in protecting school children going to and from school, and church crossing guards to aid in protecting persons going to and from places of worship, and for such purpose shall have power to control vehicular traffic within such municipality.”

⁴ At this point, the statute states “as defined in subdivision thirty-one of section 1.20 of the criminal procedure law.” Those words are omitted here. If necessary, CPL 1.20 (31) states: “Prosecutor’ means a district attorney or any other public servant who represents the people in a criminal action.”

⁵ See 10 NYCRR §§ 11.110 and 11.111 for the definition and qualifications for “public health sanitarian” if in issue.

⁶ There is no definition of “New York City public health sanitarian”. See footnote four.

⁷ At this point, the statute repeats the various types of employees. The term “person” has been inserted for simplicity.

service, commuter rail tracks or stations, train yard or revenue train in passenger service.*²

The following terms used in that definition have a special meaning:

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁸

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to another person when that person's conscious objective or purpose is to cause physical injury to such person.⁹

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:

1. That on or about (date) , in the county of (County), (specify name of employee) was (specify title of employee from the list in paragraphs [1] or [2] of the definition of the offense);
2. That, at that time and place, while (specify name of employee) was performing an assigned duty

Add if public employee is one of those listed in paragraph [1] in the definition of the offense:

on, or directly related to,

Select as appropriate:

the operation of a train or bus, cleaning of a train or bus station or terminal, assisting customers, the sale or collection of tickets, passes, vouchers, or other revenue media for use on a train or bus, or maintenance or cleaning of a train, a bus, or bus

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

⁹ See Penal Law § 15.05 (1).

station or terminal, signal system, elevated or underground subway tracks, transit station structure, including fare equipment, escalators, elevators and other equipment necessary to passenger service, commuter rail tracks or stations, train yard or revenue train in passenger service.

the defendant caused him/her physical injury; and

3. That the defendant did so with intent to cause him/her physical injury.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty.

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.
