

RECKLESS ASSAULT OF A CHILD
Penal Law § 120.02
(Committed on or after Nov. 1, 2006)

The (specify) count is Reckless Assault of a Child.

Under our law, a person is guilty of Reckless Assault of a Child when, being eighteen (18) years of age or more, such person recklessly causes serious physical injury to the brain of a child less than five (5) years old by shaking the child, or by slamming or throwing the child so as to impact the child's head on a hard surface or object.

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

SERIOUS PHYSICAL INJURY TO THE BRAIN means impairment of a person's brain which creates a substantial risk of death, or which causes death or protracted impairment of health or protracted loss or impairment of the function of the brain,¹ or extreme rotational cranial acceleration and deceleration and one or more of the following: subdural hemorrhaging; intracranial hemorrhaging; or retinal hemorrhaging.²

A person acts RECKLESSLY when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to the brain of a child less than five years old will occur,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the

¹ Penal Law § 120.02(2)(a); Penal Law §10.00(10). The references to injury to the brain contained in Penal Law § 120.02(2) have been added here to the standard definition of "serious physical injury."

² Penal Law § 120.02(2)(b).

standard of conduct that a reasonable person would observe in the situation.³

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of voluntary intoxication.⁴]

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), the defendant (defendant's name) caused serious physical injury to the brain of (specify) who was less than five (5) years of age by shaking the child, or by slamming or throwing the child so as to impact the child's head on a hard surface or object; and
2. That the defendant did so recklessly; and
3. That the defendant was eighteen (18) years old or more.

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.

³See Penal Law §15.05(3); *People v Boutin*, 75 N.Y.2d 692 (1996).

⁴See Penal Law §15.05(3).