

**ASSAULT SECOND DEGREE
(D Felony)
(Interference with Public Servants)
PENAL LAW 120.05 (3)
(Committed on or after as follows:**

September 1, 1967 [ch 1030] for:

peace officer or police officer

September 1, 1968 [ch 37] for:

"fireman"

November 1, 1984 [ch 284] for:

firefighter [including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter]

September 1, 1985 [ch 262] for:

**emergency medical service paramedic,
emergency medical service technician**

November 1, 1998 [ch 287] for:

medical or related personnel in a hospital emergency department

November 1, 1998 [ch 269] for:

by means including releasing or failing to control an animal under circumstances evincing the actor`s intent that the animal obstruct the lawful activity of such peace officer, police officer, fireman, paramedic or technician.

July 22, 2008 [ch 45] for:

**city marshal,
traffic enforcement officer,
traffic enforcement agent**

November 1, 2010 [ch 318] for:

**registered nurse,
licensed practical**

September 12, 2010 [ch 345] for:

sanitation enforcement agent

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

November 1, 2016 [ch 267] for:

Public health sanitarian, or New York City public health sanitarian

November 1, 2016 [ch 267] for:

employee of (*specify*) governed by the public service law in the course of performing an essential service)

The _____ count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when, with the intent to prevent a

Select appropriate alternative:

peace officer

police officer

prosecutor¹

registered nurse

licensed practical nurse

public health sanitarian²

New York City public health sanitarian³

sanitation enforcement agent

¹ 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 to define, CPL 1.20 (31) states: “‘Prosecutor’ means a district attorney or any other public servant who represents the people in a criminal action.”

² See 10 NYCRR §§ 11.110 and 11.111 for the definition and qualifications for “public health sanitarian” if in Issue.

³ There is no definition of “New York City public health sanitarian”. See footnote two.

New York city sanitation worker

firefighter [including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter]

emergency medical service paramedic
emergency medical service technician
medical or related personnel in a hospital emergency department
city marshal
school crossing guard⁴
traffic enforcement officer
traffic enforcement agent

⁴ At this point, the statute states “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 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.”

employee of (*specify*) governed by the public service law⁵
in the course of performing an essential service

from performing a lawful duty,⁶ he or she causes physical injury
to such person.⁷

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.”⁸

⁵ This provision of the statute is designed to protect those persons
commonly referred to as “utility workers”. Entities governed by the public
service law are commonly known as “utilities” and include gas, electric, and
steam generation corporations (Public Service Law § 30); liquid petroleum
pipeline corporations (Public Service Law § 63-ee); telephone and telegraph
corporations (Public Service Law § 90); water utility companies, not including
bottled water companies (Public Service Law § 89-a); and cable television
companies (Public Service Law § 211).

⁶ At this point, the statute states “by means including releasing or
failing to control an animal under circumstances evincing the actor's intent
that the animal obstruct the lawful activity of such peace officer, police officer,
prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal
procedure law, registered nurse, licensed practical nurse, public health
sanitarian, New York City public health sanitarian, sanitation enforcement
agent, New York city sanitation worker, firefighter, paramedic, technician, city
marshal, school crossing guard appointed pursuant to section two hundred
eight-a of the general municipal law, traffic enforcement officer or traffic
enforcement agent, or employee of any entity governed by the public service
law” This language need be included only if applicable.

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

⁸ The term “lawful duty” is not defined in the Penal Law. If in issue, the
term will need to be defined within the context of the facts presented (see

INTENT means conscious objective or purpose. Thus, a person acts with intent to prevent a (specify the appropriate title from the list on pages two, three and four) from performing a lawful duty when that person's conscious objective or purpose is to prevent such person from performing a lawful duty.⁹

PHYSICAL INJURY means impairment of physical condition or substantial pain.¹⁰

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 physical injury to (specify name of complainant);
2. That (specify name of complainant) was a (specify the appropriate title from the list on pages two, three and four); and

People v Bueno, 18 NY3d 160 [2011] [where defendant attacked an emergency medical technician (EMT) who was on his way back to his ambulance after rendering treatment, the evidence was legally sufficient to establish defendant's intent to prevent the EMT from performing a lawful duty]; *People v McDonald*, 291 AD2d 832 [4th Dept 2002]; *People v Milhouse*, 246 AD2d 119 [1st Dept 1998]; *People v Greene*, 221 AD2d 559 [2d Dept 1995]).

⁹ See Penal Law § 15.05 (1).

¹⁰ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

3. That the defendant caused such physical injury with intent to prevent (specify name of complainant) from performing a lawful duty.

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 Assault 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 Assault in the Second Degree as charged in the _____ count.