

**ASSAULT SECOND DEGREE
(D Felony)
(Felony Assault; Physical Injury)
PENAL LAW 120.05(6).
(Committed on or after Sept. 1, 1967)**

The _____ count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when, in the course of and in furtherance of the commission [*or* attempted commission] of (name of felony charged) [*or* of immediate flight therefrom], that person [*or* another participant if there be any], causes physical injury to a person other than one of the participants.

[NOTE: Add if multiple participants in the underlying felony:

Under that law, when, in the course of and in furtherance of the commission (*or* attempted commission) of (name of felony charged) (*or* of immediate flight therefrom), a participant in the commission (*or* attempted commission) of that felony causes physical injury to a non-participant, all the participants – the one who caused the physical injury as well as the other participants in the felony – are guilty of Assault in the Second Degree.]

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 terms: “physical injury,” [and] “(name of felony),” [and] [“immediate flight”].

PHYSICAL INJURY means impairment of physical condition or substantial pain.¹ If you find that physical injury was caused by the defendant [*or* by a participant in the crime], then it does not matter that the physical injury was caused unintentionally or accidentally, rather than with an intention to cause physical injury, or that it resulted from the victim's fear or fright.

¹ Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

(Add name and definition of felony)

[NOTE: Add where appropriate:

In determining whether a person is in IMMEDIATE FLIGHT from the commission (or attempted commission) of (name of felony), you may consider: (1) the distance, if any, between the location of the (name of felony) and the location where physical injury was caused; (2) the interval of time, if any, between the commission (or attempted commission) of the (name of felony) and the causing of physical injury; (3) whether (police, security personnel, citizens) were in close pursuit at the time physical injury was caused; (4) whether such person possessed fruits of the (name of felony) at the time physical injury was caused; and (5) whether such person(s) had reached a place of temporary safety before the physical injury was caused.]²

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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), committed [or attempted to commit] (name of felony); and
2. That, in the course of and in furtherance of the commission [or attempted commission] of (name of felony) [or of immediate flight therefrom], the defendant [or another participant in the commission (or attempted commission) of that felony] caused physical injury to (specify) and that (specify) was not a participant in the felony.

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 Assault in the Second Degree as

² See *People v. Gladman*, 41 NY2d 123, 129 (1976). The factors which are inapplicable to the case should be omitted in the charge to the jury.

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