

ASSAULT SECOND DEGREE
(D Felony)
Defendant 18 or more; Victim less than 7
Penal Law 120.05(9)
(Committed on or after August 1, 1996)

The _____ count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when, being eighteen (18) years old or more and with intent to cause physical injury to a person less than seven (7) years old, he or she causes such injury to such person.

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.”

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to a child less than seven (7) years old, when that person’s conscious objective or purpose is to cause physical injury to that child.¹

PHYSICAL INJURY means impairment of physical condition or substantial pain.²

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) who was less than seven (7) years old;

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

² Penal Law §10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

2. That the defendant did so with the intent to cause such physical injury; and
3. That the defendant was eighteen (18) years old or more.

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.