

**ASSAULT SECOND DEGREE  
(D Felony)  
PENAL LAW 120.05(12)  
(Committed on or after June 29, 2008)**

The \_\_\_\_\_ 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 a person who is sixty-five years of age or older, he or she causes such injury to such person, and the actor is more than ten years younger than 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: "physical injury," and "intent."

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>1</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to a person who is sixty-five years of age or older when that person's conscious objective or purpose is to cause physical injury to such person.<sup>2</sup>

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, each of the following four elements:

1. That on or about (date), in the county of (county), the defendant, (name of defendant), caused physical injury to (name of complainant);

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

<sup>2</sup> 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. That the defendant did so with the intent to cause physical injury to (*name of complainant*);
3. That, at that time, (*name of complainant*) was sixty-five years of age or older; and
4. That, at that time, the defendant was more than ten years younger than (*name of complainant*).

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.