

**ASSAULT SECOND DEGREE  
(D Felony)  
(Employee providing direct patient care)  
PENAL LAW 120.05 (11-c)  
(Committed on or after Nov. 1, 2016)**

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 an employee providing direct patient care, who is not a nurse<sup>1</sup>, whose principal employment responsibility is to carry out direct patient care for one or more patients in any

Select appropriate alternative:

hospital  
nursing home  
residential health care facility  
general hospital  
government agency including any chronic disease hospital  
maternity hospital  
outpatient department  
emergency center  
surgical center<sup>2</sup>

he or she causes physical injury to such employee providing direct patient care while such employee is performing a lawful duty<sup>3</sup>.

<sup>1</sup> At this point, the statute states “pursuant to title eight of the education law”. If whether the complainant is a nurse is in issue, the charge will need to be modified accordingly by inclusion of the appropriate definitions contained in Article VIII of the Education Law.

<sup>2</sup> At this point, the statute states “under article twenty-eight of the public health law.” Those words are omitted here. If necessary to define the appropriate terms, see Public Health Law § 2801 et seq.

<sup>3</sup> 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 *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]).

The following term(s) used in that definition has/have a special meaning:

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>4</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to an employee providing direct patient care when that person's conscious objective or purpose is to do so.<sup>5</sup>

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), (specify name of complainant) was an employee providing direct patient care, who was not a nurse, and whose principal employment responsibility was to carry out direct patient care for one or more patients in any (specify the appropriate alternative);
2. That on that date, in the county of (County), the defendant caused physical injury to (specify name of complainant); and
3. That the defendant did so with intent to cause physical injury to (specify name of complainant) while he/she was performing his/her lawful duties.

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.

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<sup>4</sup> Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

<sup>5</sup> See Penal Law § 15.05 (1).