

**ASSAULT IN THE SECOND DEGREE
(Interference with Process Servers)
Penal Law § 120.05 (14)
(Committed on or after Nov. 1, 2016)**

The (*specify*) count is Assault in the Second Degree.

Under our law, a person is guilty of Assault in the Second Degree when with intent to prevent or obstruct a process server¹ from performing a lawful duty², or intentionally, as retaliation against such a process server for the performance of the process server's duties,³ he or she causes physical injury to such process server.

The following terms used in that definition have a special meaning:

A PROCESS SERVER is a person other than an attorney or a party to an action acting on his own behalf who: (a) derives income from the service of papers in an action; or (b) has effected service of process in five or more actions or proceedings in the twelve month period immediately preceding the service in question.⁴

¹ At this point, the statute states "as defined in section eighty-nine-t of the general business law." That definition is set forth in the definition section of this charge.

² At this point, the statute states: "pursuant to article three of the civil practice law and rules". Those words are omitted here. If the lawful duties of a process server are in issue, the charge will need to be modified within the context of the facts presented by outlining the relevant, lawful duties of a process server set forth in CPLR art. 3.

³ At this point, the statute states: "pursuant to such article," referring to CPLR art. 3. See footnote 2. And, the statute continues thereafter to state: "including by means of releasing or failing to control an animal evincing the actor's intent that the animal prevent or obstruct the lawful duty of the process server or as retaliation against the process server." That latter language need be included only if applicable.

⁴ General Business Law § 89-t.

⁵ General Business Law § 89-t.

NOTE: Add if appropriate:

A person who serves interlocutory papers upon an attorney or who serves papers on behalf of a federal, state or local governmental agency in the course of his employment by such agency shall not be deemed a process server within the meaning of this article by virtue of such service.⁵

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁶

INTENT means conscious objective or purpose. Thus, a person acts with intent to prevent or obstruct a process server, from performing a lawful duty, or intentionally, as retaliation against such a process server for the performance of the process server's duties, when that person's conscious objective or purpose is to do so.⁷

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 a process server performing a lawful duty;
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 prevent or obstruct (specify name of complainant) from performing a lawful duty, or intentionally, as retaliation against (specify name of complainant) for the performance of his/her duties.

⁶ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

⁷ See Penal Law § 15.05 (1).

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.