**ASSAULT IN THE SECOND DEGREE
(Interference with Public Servants)
Penal Law § 120.05 (3)
(Committed on or after the dates specified below)**(Revised June 2019)1

**September 1, 1967 [ch 1030] for:**

**peace officer or police officer**

**September 1, 1968 [ch 37] for:**

**"fireman"**

**November 1, 1984 [ch 284] for:**

**firefighter [including a firefighter acting as a paramedic or**

**emergency medical technician administering first aid in the course**

**of performance of duty as such firefighter]**

**September 1, 1985 [ch 262] for:**

**emergency medical service paramedic,**

**emergency medical service technician**

**November 1, 1998 [ch 287] for:**

**medical or related personnel in a hospital emergency department**

**November 1, 1998 [ch 269] for:**

**by means including releasing or failing to control an animal under**

**circumstances evincing the actor`s intent that the animal obstruct**

**the lawful activity of such peace officer, police officer, fireman,**

**paramedic or technician.**

**July 22, 2008 [ch 45] for:**

**city marshal,**

**traffic enforcement officer,**

**traffic enforcement agent**

**November 1, 2010 [ch 318] for:**

**registered nurse,**

**licensed practical nurse**

**September 12, 2010 [ch 345] for:**

**sanitation enforcement agent**

**September 16, 2012 [ch 377] for:**

**New York city sanitation worker**

**January 27, 2014 [ch 259] for:**

**prosecutor**

**November 1, 2014 [ch 196] for:**

**school crossing guard**

**November 1, 2016 [ch 267] for:**

**Public health sanitarian, or New York City public health sanitarian**

**November 1, 2016 [ch 267] for:**

**employee of (*specify*) governed by the public service law in the**

**course of performing an essential service)**

1 The 2019 revision was for the purpose of providing examples of a definition of “lawful duty.”

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

Under our law, a person is guilty of Assault in the Second Degree when, with the intent to prevent a

*Select appropriate alternative*:

peace officer

police officer

prosecutor2

registered nurse

licensed practical nurse

public health sanitarian3

New York City public health sanitarian 4

sanitation enforcement agent

New York city sanitation worker

firefighter [including a firefighter acting as a paramedic or

emergency medical technician administering first aid in the

course of performance of duty as such firefighter]

emergency medical service paramedic

emergency medical service technician

medical or related personnel in a hospital emergency

department

city marshal

school crossing guard 5

1 At this point, the statute states “as defined in subdivision thirty-one of section 1.20 of the criminal procedure law.” Those words are omitted here. If necessary to define, CPL 1.20 (31) states: “‘Prosecutor’ means a district attorney or any other public servant who represents the people in a criminal action.”

2 *See* 10 NYCRR §§ 11.110 and 11.111 for the definition and qualifications for “public health sanitarian” if in Issue.

3 There is no definition of “New York City public health sanitarian”. *See* footnote two.

4 At this point, the statute states “appointed pursuant to section two hundred eight-a of the general municipal law. If, whether the complainant is a school crossing guard is in issue, the charge will need to be modified accordingly. General Municipal Law § 208-a states as follows: “The duly constituted authorities of any city, town, or village or any county police department or police district may designate, authorize and appoint such a number of persons as such authority shall deem necessary, and at such salaries as such authority shall deem advisable, as school crossing guards to aid in protecting school children going to and from school, and church crossing guards to aid in protecting persons going to and from places of worship, and for such purpose shall have power to control vehicular traffic within

traffic enforcement officer
traffic enforcement agent

employee of (*specify*) governed by the public service law6 in the course of performing an essential service

from performing a lawful duty,7 he or she causes physical injury to such person.8

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

INTENT means conscious objective or purpose. Thus, a person acts with intent to prevent a (*specify the appropriate title from the list on pages two, three and four*) from performing a lawful duty when that person's conscious objective or purpose is to prevent such person from performing a lawful duty.9

PHYSICAL INJURY means impairment of physical condition or substantial pain.10

such municipality.”

5This provision of the statute is designed to protect those persons commonly referred to as “utility workers”. Entities governed by the public service law are commonly known as “utilities” and include gas, electric, and steam generation corporations (Public Service Law § 30); liquid petroleum pipeline corporations (Public Service Law § 63-ee); telephone and telegraph corporations (Public Service Law § 90); water utility companies, not including bottled water companies (Public Service Law § 89-a); and cable television companies (Public Service Law § 211).

6 At this point, the statute states “by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such peace officer, police officer, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, public health sanitarian, New York City public health sanitarian, sanitation enforcement agent, New York city sanitation worker, firefighter, paramedic, technician, city marshal, school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law, traffic enforcement officer or traffic enforcement agent, or employee of any entity governed by the public service law ....” This language need be included only if applicable.

7 At this point, the statute repeats the various types of employees. The term “person” has been inserted for simplicity.

8 *See* Penal Law § 15.05 (1).

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

LAWFUL DUTY:

*Note: 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 e.g. CPL 140.20 (Arrest without a warrant by a police officer); CPL 140.25 (Arrest without a warrant by a peace officer); CPL140.50 (Temporary questioning of persons in public places; search for weapons).11 The following are examples of a definition of “lawful duty” that may be used or adapted as the facts of the case dictate:*

1. It is a lawful duty of a police officer to detain a person when the officer has reasonable suspicion to believe that a person has or is engaged in the commission of a crime.
2. It is a lawful duty of a police officer to arrest a person when the officer has reasonable cause to believe that a person has or is engaged in the commission of a crime.
3. It is a lawful duty of a police officer to stop an automobile for which the officer has reasonable suspicion to believe an occupant or occupants is or has engaged in unlawful activity, including a violation of the vehicle and traffic law; and upon doing so, the officer is performing a lawful duty in detaining the occupant or occupants for a reasonable period to further investigate whether there is reasonable cause to be believe an occupant is or has engaged in an offense; and the officer is performing a lawful duty when, with reasonable cause to believe an occupant is or has engaged in a crime, the officer arrests an occupant.

*Add one or more of the folllowing paragraphs as appropriate:* Reasonable suspicion [reasonable cause] does not require that a crime in fact be committed by the person

11 *See People v Bueno*, 18 NY3d 160 (2011) (an attack upon an emergency medical technician (EMT) who was on his way back to his ambulance after rendering treatment presented sufficient evidence that the defendant’s intent was to prevent the EMT from performing a lawful duty); *People v McDonald,* 291 AD2d 832 (4th Dept 2002) (court erred in instructing the jury that “lawful duty” was “performing an official function of any kind” and instead should have instructed the jury (in this case) pursuant to CPL 140.25, which sets forth the duties of a peace officer); *People v Milhouse*, 246 AD2d 119 (1st Dept 1998) (court wrongly reasoned that proof of “probable cause” at a *Mapp* hearing was conclusive proof of “lawful duty” at trial); *People v Greene*, 221 AD2d 559 (2d Dept 1995) (court erred in instructing jury that if officer was attempting an arrest the officer was performing a lawful duty as a matter of law).

stopped [arrested].

Neither reasonable suspicion nor reasonable cause require that a crime in fact be committed by the person stopped and arrested.

Reasonable suspicion exists when information which appears reliable discloses facts or circumstances sufficient to convince a person of reasonable caution that criminal activity is at hand.11

Reasonable cause exists when information which appears reliable discloses facts or circumstances sufficient to convince a person of reasonable caution that it is more likely than not that an offense was or is being committed and that the person arrested committed it. 12

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 name of complainant)*;
2. That *(specify name of complainant)* was a (*specify the appropriate title from the list on pages two, three and four)*; and
3. That the defendant caused such physical injury with intent to prevent (*specify name of complainant*) from performing a lawful duty.

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.

11 *See* CPL 140.50; *People v. Cantor*, 36 NY2d 106 (1975)

12 *See* CPL 70.10(2); *Brinegar v. United States*, 338 US 160 (1949); *People v. Carrasquillo*, 54 NY2d 248, 254(1981).