**ASSAULT IN THE SECOND DEGREE   
Penal Law § 120.05(12)**

**(Committed on or after June 29, 2008)**

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 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.

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

PHYSICAL INJURY means impairment of physical condition or substantial pain.1

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.2

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*);

1. That the defendant did so with the intent to cause physical injury to (*name of complainant*);

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

2 *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.

1. That, at that time, (*name of complainant*) was sixty-five years of age or older; 3 and
2. That, at that time, the defendant was more than ten years younger than (*name of complainant*).

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.

3 *See People v. Burman*, 173 A.D.3d 1727, 102 N.Y.S.3d 849, 851 (4th Dept 2019) (defendant does not have to know that the person assaulted was 65 years of age or older; “the statute simply requires that the person whom the actor intentionally injures be, as a matter of fact, 65 years of age or older”).

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