

**ASSAULT IN THE SECOND DEGREE**  
**(Reckless; Serious Physical Injury; Weapon)**  
**Penal Law § 120.05(4)**  
**(Committed on or after Nov. 1, 1986)<sup>1</sup>**  
**Revised April, 2018 <sup>1</sup>**

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

Under our law, a person is guilty of Assault in the Second Degree when that person recklessly causes serious physical injury to another person by means of a deadly weapon [*or dangerous instrument*].

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

**SERIOUS PHYSICAL INJURY** means impairment of a person's physical condition which creates a substantial risk of death, or which causes death, or serious and protracted disfigurement, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.<sup>2</sup>

A person acts **RECKLESSLY** with respect to serious physical injury by means of a deadly weapon [*or dangerous instrument*] when that person:

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- 1** This charge applies when the crime was committed on or after November 1, 1986 except as to the following weapons which were added to the definition of "deadly weapon" [Penal Law § 10.00(12)] after that date:

November 1, 1995, was the effective date of an amendment to the definition of "deadly weapon" to add a "metal knuckle knife." L. 1995, ch. 219.

November 1, 2008, was the effective date of an amendment also to that definition to add "plastic knuckles." L. 2008, ch. 257.

The 2018 revision was to include the statutory additions to the definition of "deadly weapon" and the decisional law definitions of weapons as set forth in footnote 5.

<sup>2</sup> Penal Law § 10.00(10).

engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to another person by means of a deadly weapon [or dangerous instrument] will occur,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.<sup>3</sup>

*[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:*

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication.<sup>4</sup>]

DEADLY WEAPON means:

Select appropriate alternative:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

a switchblade knife, defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

a pilum ballistic knife, defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.

a metal knuckle knife, defined as a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

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<sup>3</sup> See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

<sup>4</sup> Penal Law § 15.05(3).

metal knuckles, defined as a metal object with multiple holes, through which individual places his or her fingers so that a metal bar rests atop the individual's knuckles.

a billy, defined as a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes.

a dagger

a blackjack

plastic knuckles<sup>5</sup>

[DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury.]<sup>6</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, both of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused serious physical injury to (specify) by means of a deadly weapon [*or dangerous instrument*]; and

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<sup>5</sup> Penal Law § 10.00(12) defines “deadly weapon.” See Penal Law § 265.00 for the definitions of “switchblade knife,” “gravity knife,” “pilum ballistic knife” and “metal knuckle knife”; *People v. Aragon*, 28 N.Y.3d 125 (2016) (for the definition of “metal knuckles”); *People v. Ocasio*, 28 N.Y.3d 178 (2016) (for the definition of “billy”).

There is no controlling statutory or decisional law definition of “plastic knuckles” albeit the legislative memorandum in support of adding that term equated it with “brass [metal] knuckles”; thus, for the definition of “plastic knuckles,” a court may wish to consider using the definition of “metal knuckles,” substituting “plastic object” for “metal object” and “plastic bar” for “metal bar.”

<sup>6</sup> Penal Law § 10.00(13).

2. That the defendant did so recklessly.

If you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.