

**RECKLESS ASSAULT OF A CHILD
BY A CHILD DAY CARE PROVIDER
(E Felony)
Penal Law 120.01
(Committed on or after Nov. 1, 1998)**

The _____ count is Reckless Assault of a Child by a Child Day Care Provider.

Under our law, a person is guilty of Reckless Assault of a Child by a Child Day Care Provider when, being a child day care provider or an employee thereof, he or she recklessly causes serious physical injury to a child, who is under the care of such provider or employee, and who is less than eleven (11) years of age.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "child day care provider," "serious physical injury," and "recklessly."

CHILD DAY CARE PROVIDER means any individual, association, corporation, partnership, institution or agency whose activities include providing child day care, or operating a home or facility where child day care is provided.¹

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, protracted impairment of health or protracted loss or impairment of the function of a bodily organ.²

A person acts **RECKLESSLY** with respect to serious physical injury when that person:

¹See Penal Law §10.10(19) and Social Services Law §390(1)(b).

² Penal Law §10.00(10).

engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to a child who is less than 11 years of age 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.³

[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 voluntary intoxication.⁴]

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 serious physical injury to (specify) who was less than 11 years of age;
2. That the defendant did so recklessly; and
3. That the defendant was a child day care provider or an employee of a child day care provider, and (specify) was under the defendant's care.

³See Penal Law §15.05(3); *People v Boutin*, 75 N.Y.2d 692 (1996).

⁴See Penal Law §15.05(3).

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Reckless Assault of a Child By a Day Care Provider as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Reckless Assault of a Child By a Day Care Provider as charged in the _____ count.