

AGGRAVATED ASSAULT - UPON CERTAIN CORRECTIONS PERSONNEL
(PHYSICAL MENACE)
N.J.S.A. 2C:12-1b(5)(h)

Count ____ of this indictment charges the defendant with aggravated assault.

(Read appropriate count of indictment)

The defendant is accused of violating a law that provides, in pertinent part:

A person is guilty of aggravated assault if he/she (a)ttempts by physical menace to put any (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer) acting in the performance of (his/her) duties while in uniform or exhibiting evidence of (his/her) authority or because of (his/her) status as a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer). . . in fear of imminent serious bodily injury.

In order for you to find the defendant guilty of this crime, the State must prove each of the following elements beyond a reasonable doubt:

1. That the defendant purposely attempted to put **(NAME OF VICTIM)** in fear of imminent serious bodily injury;
2. That the defendant did so by physical menace;
3. That **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);
4. That the defendant knew **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);
5. That **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff,

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undersheriff, or sheriff's officer) acting in the performance of (his/her) duties or while in uniform or exhibiting evidence of (his/her) authority

-or-

That the defendant acted because the **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);

The first element that the State must prove is whether the defendant purposely attempted to put the **(NAME OF VICTIM)** in fear of imminent serious bodily injury.

An attempt occurs, in the context of this charge, if the defendant purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in the course of conduct planned to culminate in his/her putting the victim in imminent fear of serious bodily injury.

In order to find that the defendant attempted to put another in fear of imminent serious bodily injury, you must find that he/she did so purposely.

A defendant acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his/her purpose was to put the victim in fear of imminent bodily injury. It is within your power to find that proof of purpose has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances.

To find that the defendant attempted to put **(NAME OF VICTIM)** in imminent fear of serious bodily injury by physical menace, the State must prove beyond a reasonable doubt that the defendant had the purpose to put the victim in imminent fear of serious bodily injury. The

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State must also prove beyond a reasonable doubt that the defendant purposely did or omitted to do anything, which, under the circumstances as a reasonable person would believe them to be, is an act or omission that is a substantial step in the course of conduct planned to culminate in his/her putting the victim in fear of imminent serious bodily injury. However, the step taken must strongly show the defendant's criminal purpose. That is, the step taken must be substantial and not just a very remote preparatory act, and must show that the accused has a firmness of criminal purpose.

Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Imminent means likely to happen without delay.¹

The second element that the State must prove beyond a reasonable doubt is that the defendant attempted to put the victim in imminent fear of serious bodily injury by means of physical menace. Physical menace is accomplished through an act or acts which are physically threatening acts.² Words alone are insufficient to constitute physical menace.

The third element that the State must prove beyond a reasonable doubt is that **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer).

The fourth element that the State must prove beyond a reasonable doubt is that the defendant knew that the **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation

¹ See Model Jury Charge (Criminal), Terroristic Threats (N.J.S.A. 2C:12-3(b)).

² The 1971 Model Commentary to the Proposed Criminal Code stated that N.J.S.A. 2C:12-1(a)(3) codified preexisting New Jersey law. See State v. Drayton, 114 N.J.Super. 490 (App. Div. 1971) and cases cited therein for treatment of how physical menace was interpreted prior to the enactment of Title 2C.

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Officer)(Sheriff, undersheriff, or sheriff's officer).

A person acts knowingly with respect to causing bodily injury if a person is aware that his/her conduct is of that nature, or that such circumstances exist or a person is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if a person is aware that it is practically certain that his/her conduct will cause bodily injury. One is said to act knowingly if one acts with knowledge, if one acts consciously, if he comprehends his/her acts.

The fifth element that the State must prove beyond a reasonable doubt is that

(CHOOSE APPROPRIATE)

(NAME OF VICTIM) was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer) acting in the performance of (his/her) duties or while in uniform or exhibiting evidence of (his/her) authority.

-OR-

The defendant acted because the **(NAME OF VICTIM)** was a (Department of Corrections Employee)(County Corrections Officer)(Juvenile Corrections Officer)(State Juvenile Facility Employee)(Juvenile Detention staff member)(Juvenile Detention officer)(Probation Officer)(Sheriff, undersheriff, or sheriff's officer);

(RESUME MAIN CHARGE - CHARGE IN ALL CASES)

If you find that the State has proved each element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.