

AGGRAVATED ASSAULT - UPON LAW ENFORCEMENT OFFICER
(PHYSICAL MENACE)

(N.J.S.A. 2C:12-1b(5)(a), (b), (c), (d), (e), (f), (g))¹

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 . . . (a)ny law enforcement 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 law enforcement officer . . . in fear of imminent serious bodily injury.

For you to find the defendant guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:

1. that the defendant purposely attempted by physical menace to put **(insert name of victim)** in fear of imminent serious bodily injury;
2. that **(insert name of victim)** was a law-enforcement officer; and
- 3a. that the defendant knew that **(insert name of victim)** was a law-enforcement officer² acting in the performance of (his/her) duties or while in uniform or exhibiting evidence of (his/her) authority;³ or

¹ This charge is drafted for the most common situation, where a defendant is charged with aggravated assault upon a law enforcement officer under N.J.S.A. 2C:12-1b(5)(a). Other sections of the statute apply, with differing language, to aggravated assault upon paid and volunteer firemen; emergency first-aid and medical personnel; school board members, school administrators, teachers and other employees of a school board; employees of the Division of Youth and Family Services; the judiciary; and bus drivers and railroad employees. N.J.S.A. 2C:12-1b(5)(b) to (g). As always, the Model Charge must be adapted to fit the facts of each case.

² State v. Green, 318 N.J. Super. 361, 376 (App. Div. 1999), aff'd o.b., 163 N.J. 140 (2000) (the defendant must know that the victim is a law-enforcement officer).

³ If transferred intent is an issue, the charge should be modified accordingly. State in the Interest of S.B., 333 N.J. Super. 236, 243 (App. Div. 2000).

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- 4b. that the defendant knew that **(insert name of victim)** was a law-enforcement officer⁴ and purposely committed the act against (him/her) because of (his/her) status as a law-enforcement officer.

The first element that the State must prove beyond a reasonable doubt is that the defendant purposely attempted by physical menace to put **(insert name of victim)** in fear of imminent serious bodily injury.

Serious bodily injury means bodily injury that 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.⁵

Imminent means likely to happen without delay.⁶

Physical menace means a threatening of harm by physical conduct, and not merely by words.

A person acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is a person's 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 a person is aware of the existence of such circumstances or a person believes or hopes that they exist. One can be deemed to be acting purposely if one acts with design, with a purpose, with a particular object, if one really means to do what (he/she) does.⁷

Purpose is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, words or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that (he/she) acted with a particular state of mind. It is within your power to find that proof of purpose has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

⁴ State v. Green, *supra*.

⁵ N.J.S.A. 2C:11-1b.

⁶ Cf. the Model Charge for terroristic threats (N.J.S.A. 2C:12-3b).

⁷ N.J.S.A. 2C:2-2b(1).

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The second element that the State must prove beyond a reasonable doubt is that **(insert name of victim)** was a law-enforcement officer.

A law-enforcement officer is any person who is employed as a permanent full-time member of any State, county or municipal law-enforcement agency, department or division of those governments and who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention or rehabilitation of persons violating the criminal laws of this state.⁸

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

a. that the defendant knew that **(insert name of victim)** was a law-enforcement officer acting in the performance of (his/her) duties or while in uniform or exhibiting evidence of (his/her) authority; or

b. that the defendant knew that **(insert name of victim)** was a law-enforcement officer and purposely committed the act against (him/her) because of (his/her) status as a law-enforcement officer.

I have already instructed you on the meaning of a purposeful state of mind. That definition also applies to this element.

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances 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 such a result. One is said to act knowingly if one acts with knowledge, if one acts consciously, if (he/she) comprehends (his/her) acts.⁹

Like purpose, knowledge is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, words or acts.

If you find that the State has proven every element beyond a reasonable doubt, then you must find the defendant guilty. If, however, the State has failed to prove any element beyond a reasonable doubt, then you must find (him/her) not guilty.

(Where appropriate charge simple assault as a lesser offense.)¹⁰

⁸ N.J.S.A. 40A:14-152.2.

⁹ N.J.S.A. 2C:2-2b(2)

¹⁰ N.J.S.A. 2C:12-1a.