

ASSAULT UPON THE INSTITUTIONALIZED ELDERLY
(N.J.S.A. 2C:12-1d)

Defendant is charged in count _____ of this indictment with Assault by an employee upon the institutionalized elderly. Defendant is charged with violating a provision of our law that provides, in pertinent part, that:

A person who is employed by a facility...who commits a simple assault...upon an institutionalized elderly person... is guilty of a crime.¹

In order for you to convict the defendant of this offense, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant committed a simple assault upon (INSERT VICTIM);
2. That the victim was an institutionalized elderly person;
3. That the defendant was employed by a facility as defined by the law.

The first element that the State must prove beyond a reasonable doubt is that the defendant committed a simple assault.

[CHARGE APPROPRIATE SUBSECTION OF SIMPLE ASSAULT

N.J.S.A. 2C:12-1(a) or N.J.S.A. 2C:12-1(a)(2), as facts warrant]²

1) CHARGE IF SIMPLE ASSAULT, N.J.S.A. 2C:12-1(a)(1) is the basis of allegation:

A person commits a simple assault if he attempts to cause or purposely, knowingly or recklessly causes bodily injury to another. In order for you to find the defendant committed a simple assault, the State must prove, beyond a reasonable doubt:

1. That the defendant attempted to cause or actually caused bodily injury to another.
2. That the defendant acted purposely, or knowingly or recklessly.

Bodily injury is defined as physical pain, illness or any impairment of the physical condition.

¹ The statute refers to section 2 of P.L. 1977, c. 239, codified at N.J.S.A. 52:27G-2.

² Under the statute, a defendant cannot be found guilty of this offense based on a theory of simple assault under N.J.S.A. 2C:12-1(a)(3). See N.J.S.A. 2C:12-1(d).

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A person acts purposely with respect to causing bodily injury if it is a person's conscious object to cause bodily injury. 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.

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/she) comprehends (his/her) acts.

A person acts recklessly with respect to causing bodily injury when a person consciously disregards a substantial and unjustifiable risk that the material element exists or will result from (his/her) conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. One is said to act recklessly if one acts with recklessness, with scorn for the consequences, heedlessly, foolhardily.

The nature of the purpose or knowledge or recklessness with which the defendant acted toward the victim of the assault is a question of fact for you the jury to decide. Purpose and knowledge and recklessness are conditions 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 cause bodily injury. It is within your power to find that proof of purpose

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or knowledge or recklessness has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances.

For you to find that the defendant caused bodily injury to **(insert name of victim)**, the State must prove beyond a reasonable doubt that (he/she) would not have been injured but for the defendant's conduct.³

(IF AN ATTEMPT IS ALLEGED, CHARGE APPROPRIATE MODEL CHARGE ON ATTEMPT, N.J.S.A. 2C:5-1)

-OR-

2) CHARGE IF SIMPLE ASSAULT, N.J.S.A. 2C:12-1(a)(2) is the basis of allegation:

A person commits a simple assault if he negligently causes bodily injury to another with a deadly weapon. In order for you to find the defendant committed a simple assault, the State must prove, beyond a reasonable doubt

1. that the defendant caused bodily injury to another;
2. that the defendant caused the bodily injury by use of a deadly weapon;
3. that the defendant acted negligently.

Bodily Injury is defined as physical pain, illness, or any impairment of the physical condition of another.

Deadly Weapon is defined as any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

A person acts negligently with respect to causing bodily injury when he/she should be aware of a substantial and unjustifiable risk that the material element exists or will result from his/her conduct. The risk must be of such a nature and degree that the actor's failure to perceive

³ N.J.S.A. 2C:2-3a(1). If causation is contested, a fuller explanation of causation may be needed. N.J.S.A. 2C:2-3.

it, considering the nature and purpose of his/her conduct and the circumstance known to him/her, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. A person is said to act negligently if the person acts with carelessness, when compared to how a reasonable person should act under the circumstances as they exist at the time of the assault.⁴

[RESUMPTION OF MAIN CHARGE]

The second element that the State must prove beyond a reasonable doubt is that the victim was an institutionalized elderly person.

An institutionalized elderly person is defined as any person 60 years of age or older, who is a patient, resident or client of any facility.⁵

I will now define facility for you.

A facility is defined as any facility or institution, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. In this case, the State alleges the facility was (INSERT TYPE OF FACILITY ALLEGED.)⁶

Government Agency means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the State or to which the State is a party, or by any county or municipality, which is responsible for the regulation, visitation,

⁴ State v. Brown, 228 N.J.Super. 211 (App Div 1988), *rev'd on other grounds* 118 N.J. 595 (1990).

⁵ N.J.S.A. 52:27G-2(i).

⁶ N.J.S.A. 52:27G-2(f) also states that "Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential health care facilities, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly and medical day care centers."

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inspection or supervision of facilities, or which provides services to patients, residents or clients of facilities.⁷

A person is considered to be an institutionalized elderly person if he/she is a patient, resident or client of any facility. A person is considered to be a patient, resident or client of a facility if he/she is receiving treatment or care in a facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status.⁸

Thus, to prove the second element, the State must prove beyond a reasonable doubt that the victim was 60 years of age or older when the assault occurred, and that he/she was a patient, resident or client of a facility as I have defined those terms for you.

The third element that the State must prove beyond a reasonable doubt is that defendant was employed by the facility when the assault occurred.⁹

I have already defined facility for you.

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.

⁷ N.J.S.A. 52:27G-2(g).

⁸ N.J.S.A. 52:27G-2(l).

⁹ N.J.S.A. 52:27G-2(f).