

**SIMPLE ASSAULT (Bodily Injury)(Lesser Included Offense)
(N.J.S.A. 2C:12-1a(1))**

The law requires that the Court instruct the jury with respect to possible (lesser) included offenses, even if they are not contained in the indictment. Just because the Court is instructing you concerning these offenses does not mean that the Court has any opinion one way or another about whether the defendant committed these, or any, offenses. You should consider these offenses along with those for which the defendant is indicted. However, you are not to render a verdict on these offenses or answer the questions on the verdict sheet unless you find that the State has failed to meet its burden with regard to the offense(s) in the indictment.

Simple assault is a lesser-included offense to count _____ of this indictment. The statute which defines simple assault provides that:

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 convict the defendant of this offense, the State must prove the following elements beyond a reasonable doubt:

(CHARGE AS APPROPRIATE)

OPTION ONE (Causing Bodily Injury)

1. That the defendant did cause bodily injury to **NAME OF VICTIM**; and
2. That the defendant acted purposely or knowingly or recklessly in causing bodily injury to **NAME OF VICTIM** (or another).¹

The first element that the State must prove beyond a reasonable doubt is the defendant caused bodily injury to another.

¹ A person can violate the provisions of the statute under a theory of transferred intent. See N.J.S.A. 2C:2-3(d).

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Bodily injury is defined as physical pain, illness or any impairment of the physical condition.²

The second element that the State must prove beyond a reasonable doubt is the defendant acted purposely or knowingly or recklessly in causing bodily injury to **NAME OF VICTIM** or (Another).

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

² N.J.S.A. 2C:11-1(a).

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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 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.³

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.

OPTION TWO (ATTEMPT TO CAUSE BODILY INJURY):

1. That the defendant attempted to cause bodily injury to **NAME OF VICTIM** (or another); and
2. That the defendant acted purposely.

The first element that the State must prove beyond a reasonable doubt is the defendant attempted to cause bodily injury to another.

³ If causation is an issue, the jury should be instructed on causation. See N.J.S.A. 2C:2-3a(1) et. seq.

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

The second element the state must prove beyond a reasonable doubt is the defendant purposely attempted to cause bodily injury to **NAME OF VICTIM** (or another).

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.

The law provides that a person attempts to commit the crime of simple assault if, acting purposefully, he:

(select appropriate section)

1. Engaged in conduct that would constitute the offense if the attendant circumstances were as a reasonable person would believe them to be;

(or)

2. Did (or omitted to do) anything with the purpose of causing bodily injury to another without further conduct on his part. This means that the defendant(s) did something designed to cause bodily injury without having to take any further action.

(or)

3. Did (or omitted to do) anything that, under the circumstances as a reasonable person would believe them to be, was an act (or omission) constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

The step taken must be one that is strongly corroborative of the defendant's criminal purpose. The accused must be shown to have had a firmness of criminal purpose in light of the

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step(s) he/she had already taken. These preparatory steps must be substantial and not just very remote preparatory acts.⁴

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.⁵

⁴ If renunciation of criminal purpose is alleged, see N.J.S.A. 2C:5-1(d), that portion of the Model Jury Charge on Attempt regarding renunciation should also be charged.

⁵ Simple Assault is a disorderly persons offense. It is a petty disorderly persons offense if the assault was committed in a fight or in a scuffle entered into by mutual consent. See N.J.S.A. 2C:12-1. If a reasonable view of the evidence supports a view that such circumstances may exist, the jury should be instructed that the State bears the burden of proving the absence of such circumstances beyond a reasonable doubt. Appendi v. New Jersey, 530 U.S. 466 (2000); State v. Johnson, 166 N.J. 523 (2001). See also State v. Jordon, 86 N.J.Super. 585 (App. Div. 1965), interpreting predecessor fighting statute, N.J.S.A. 2A:170-27.