

§ 120.00 Assault in the third degree.

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
2. He recklessly causes physical injury to another person; or
3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

- Jail up to 364 days
- **Split Sentence** including both imprisonment and either 2 or 3 years of probation or 1 year of conditional discharge. Must be either a definite sentence of jail of up to 60 days, or intermittent jail of up to 4 months. See PL 60.01(2)(d), 65.00(3)(b)(i).
- **Probation** for 2 or 3 years. PL 60.01(2)(a)(i) and 65.00.
- **Interim Probation Supervision for one year but can be extended for treatment programs.** CPL § 390.30(6)
- **Conditional Discharge (CD)** for 1 year. PL 60.01(2)(a)(i) and 65.05.
- **Unconditional Discharge** if the court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release. PL 60.01(3)(d) and 65.20(1).
- **Fine** of up to \$1,000 or double the defendant's gain from the crime PL 60.01(2)(c), 60.01(3)(b), 60.01(3)(c), and 80.05
- **Mandatory surcharge** of \$175 (or \$180 if in a town or village court) and a **crime victim assistance fee** of \$25, **unless restitution or reparation has been made.** PL 60.35(1)(a)(ii); PL 60.35(6); PL 60.35(9).
- If a victim is seeking **restitution or reparation**, the court must consider ordering it, and if not ordered, the court must explain why it's not being ordered on the record. PL 60.27(1); CPL 420.10(8).
- A \$50-dollar **DNA databank fee** must be imposed in addition to the mandatory surcharge and crime victim assistance fee. Executive Law 995(7); Penal Law 60.35(1)(a)(v).
- And after sentencing the **defendant must provide a DNA sample** for the state DNA identification index. Executive Law 995-c(3).
- If the defendant is convicted of this offense as a **hate crime**, the sentencing options are the same as for an offense one category higher than this offense (in the case of a Class A misdemeanor, it makes the offense a felony). PL 485.10(2).