

**MENACING A POLICE OFFICER
OR PEACE OFFICER
(D Felony)
PENAL LAW 120.18
(Committed on or after Dec. 21, 2005)**

The _____ count is Menacing a Police Officer [*or Peace Officer*].

Under our law, a person is guilty of Menacing a Police Officer [*or Peace Officer*] when he or she intentionally places or attempts to place a police officer [*or peace officer*] in reasonable fear of physical injury, [*or serious physical injury or death*¹] by displaying a

[*Select appropriate alternative(s)*]:

deadly weapon

knife

pistol, revolver, rifle, shotgun, machine gun or other firearm, whether operable or not]

where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was a police officer [*or peace officer*].²

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the

¹ We would note that every “serious physical injury” and “death” must include physical injury.

² If the status of the victim as a police or peace officer is at issue, refer to the definitions of “police officer” set forth in CPL § 1.20(34) and of “peace officer” set forth in CPL § 2.10.

following terms: [“deadly weapon,”]³ “physical injury,” [“serious physical injury,”] “intentionally,” “knew,” “reasonably should have known,” and “official duties.”

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁴

[SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death, or which causes death, or serious and protracted disfigurement, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁵]

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY places or attempts to place a police officer [*or* peace officer] in reasonable fear of physical injury by displaying a weapon when his or her conscious objective or purpose is to do so.⁶

A person REASONABLY SHOULD HAVE KNOWN that the victim was a police officer [*or* peace officer] if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would have known that such

³The definition of this crime includes “deadly weapon” and a number of other items. Those other items are found in the definition of “deadly weapon” except for a “billy,” “blackjack,” or “metal knuckles.” If one of these items is in issue, then so define deadly weapon. See Penal Law § 10.00(12). We would also note that the definition of other items listed in the definition of deadly weapon requires operability. However, the definition of this crime expressly excludes the need for operability.

⁴See Penal Law § 10.00(9).

⁵See Penal Law § 10.00(10).

⁶ See Penal Law § 15.05(1).

intended victim was a police officer [*or* peace officer].⁷

A police officer [*or* peace officer] is engaged in the course of performing his or her OFFICIAL DUTIES when he or she is acting pursuant to his or her occupation as a police officer [*or* peace officer], rather than as a private citizen.⁸

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), placed or attempted to place (specify) in reasonable fear of physical injury [serious physical injury or death], by displaying a

[*Select appropriate alternative(s):*

deadly weapon

knife

pistol, revolver, rifle, shotgun, machine gun or other firearm, whether operable or not]

2. That the defendant did so intentionally;
3. That, at the time of the incident, (specify) was a police officer [*or* peace officer] in the course of performing

⁷ Cf. *People v. Goetz*, 68 NY2d 96 (1986).

⁸ See *People v. Davis*, 43 NY2d 17 (1977); *People v. Woods*, 141 AD2d 684 (2nd Dept. 1988); *People v. Lanzot*, 67 AD2d 864 (1st Dept. 1979). This general definition is based on limited existing case law, and may need to be modified or amplified in light of the facts of the individual case and the arguments of the parties.

his/her official duties; and

4. That, at the time of the incident, the defendant knew or reasonably should have known that *(specify)* was a police officer [*or* peace officer].

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Menacing a Police Officer [*or* Peace Officer] as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Menacing a Police Officer [*or* Peace Officer] as charged in the ____ count.