

AGGRAVATED CRIMINAL CONTEMPT
(D Felony)
PENAL LAW 215.52(1)
(Committed on or after Sept. 1, 1996)

The _____ count is Aggravated Criminal Contempt.

Under our law, a person is guilty of Aggravated Criminal Contempt when, in violation of a duly served order of protection, or such order of which the defendant has actual knowledge because he or she was present in court when such order was issued,¹ he or she intentionally or recklessly causes physical injury or serious physical injury to a person for whose protection such order was issued.

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 following terms: "physical injury," "serious physical injury," "intentionally" and "recklessly."

PHYSICAL INJURY means impairment of physical condition or substantial pain.²

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.³

A defendant INTENTIONALLY causes physical injury or serious physical injury to a person for whose protection such

¹ The statute here adds "or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction." If applicable, the charge to the jury should include such language.

²See Penal Law § 10.00(9).

³See Penal Law § 10.00(10).

order was issued when that defendant's conscious objective or purpose is to do so.⁴

A defendant RECKLESSLY causes physical injury or serious physical injury to a person for whose protection such order was issued when that defendant does so by engaging in conduct which creates a substantial and unjustifiable risk that such injury will occur, and

when that defendant is aware of and consciously disregards that risk, and

when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.⁵

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication.⁶]

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), the (specify) court issued an order of protection that was duly served, or such order of which the defendant had actual knowledge because he/she was present in court

⁴See Penal Law § 15.05(1).

⁵ See *People v. Woodward*, 148 A.D.2d 997 (4th Dept. 1989); *People v. Gina*, 137 A.D.2d 555 (2nd Dept. 1988); *People v. Simpson*, 132 A.D.2d 894 (3rd Dept. 1987).

⁶ See Penal Law § 15.03(3).

when such order was issued;⁷

2. That the order was issued for the protection of (specify);
3. That on or about (date), in the County of (county), the defendant, (defendant's name), in violation of the order, caused physical injury or serious physical injury to (specify); and
4. The defendant did so intentionally or recklessly.

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 Aggravated Criminal Contempt 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 Aggravated Criminal Contempt as charged in the _____ count.

⁷ See footnote number 1 for additional language, if applicable.