**MENACING SECOND DEGREE

(Stalking)

Penal Law § 120.14(2)

(Committed on or after Nov. 1, 1992)**

The (*specify*) count is Menacing in the Second Degree.

Under our law, a person is guilty of Menacing in the Second Degree when he or she repeatedly follows another person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury [*or* serious physical injury1] [*or* death].

The following term(s) used in that definition has/have a special meaning:

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 person acts INTENTIONALLY when that person's conscious objective or purpose is to cause a particular result or to engage in particular conduct. Thus, a person intentionally places or attempts to place another person in reasonable fear of physical injury [*or* serious physical injury] [*or* death] when that

1 Since "physical injury" includes "serious physical injury," it should not be necessary to charge "serious physical injury" unless the accusatory instrument only charges such injury.

2 Penal Law § 10.00(9); *See People v. Chiddick*, 8 NY3d 445 (2007).

3 Penal Law § 10.00(10).

person's conscious objective or purpose is to place another person in reasonable fear of physical injury [*or* serious physical injury] [*or* death].4

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, both of the following two elements:

1. That on or about  *(date)*  , in the county of  *(county)*  , the defendant,  *(defendant's name)*  , repeatedly followed *(specify)*  or engaged in a course of conduct or repeatedly committed acts over a period of time; and
2. That, by doing so, the defendant intentionally placed or attempted to place  *(specify)*  in reasonable fear of physical injury [*or* serious physical injury] [*or* death].

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

4 *See* Penal Law § 15.05(1).

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