

**MENACING SECOND DEGREE**  
**(A Misdemeanor)**  
**(Stalking)**  
**PENAL LAW 120.14(2)**  
**(Committed on or after Nov. 1, 1992)**

The \_\_\_\_\_ 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 injury<sup>1</sup>] [*or* death].

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,"] and "intentionally."

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>2</sup>

[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.<sup>3</sup>]

A person acts INTENTIONALLY when that person's conscious objective or purpose is to cause a particular result or

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<sup>1</sup> 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.

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

<sup>3</sup> Penal Law § 10.00(10).

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

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].

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Menacing in the Second Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Menacing in the Second Degree as charged in the \_\_\_\_\_ count.

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<sup>4</sup> See Penal Law § 15.05(1).