

**INTIMIDATING A VICTIM OR WITNESS
IN THE FIRST DEGREE
Penal Law § 215.17
(Committed on or after Nov. 1, 1985)**

The (*specify*) count is Intimidating a Victim or Witness in the First Degree.

Under our law, a person is guilty of Intimidating a Victim or Witness in the First Degree when he or she

Select appropriate alternative:

Intentionally causes serious physical injury to another person for the purpose of obstructing, delaying, preventing or impeding the communication by such other person or another person of information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer or for the purpose of compelling such other person or another person to swear falsely.

Intentionally causes serious physical injury to another person on account of such other person or another person having communicated information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer.

and when the defendant does so, other than in the course of that criminal transaction or immediate flight¹ therefrom.²

¹ If "immediate flight" is in issue, see *People v. Gladman*, 41 NY2d 123 (1976).

² The statute opens with the words: "other than in the course of that criminal transaction or immediate flight." Since "that" criminal transaction refers to the criminal transaction about which the victim has information as recited in the remaining portions of the statute, we have so indicated by moving that language to the end and preceding it with the language "and when the defendant does so..."

The following terms used in that definition have a special meaning:

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, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.³

A person INTENTIONALLY causes serious physical injury to another when that person's conscious objective or purpose is to do so.⁴

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

1. That on or about (date) , in the county of (county) , the defendant, (defendant's name), caused serious physical injury to (specify);

Select appropriate alternative second element:

2. That the defendant did so intentionally and for the purpose of obstructing, delaying, preventing or impeding the communication by (specify) or another person of information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer [or for the purpose of compelling (specify) or another person to swear falsely]; and

Or

2. That the defendant did so intentionally and on account of (specify) or another person having

³See Penal Law § 10.00(10).

⁴See Penal Law § 15.05(1).

communicated information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer; and

3. That the defendant did not do so in the course of that criminal transaction or in the immediate flight therefrom.

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

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