

**CRIMINAL CONTEMPT IN THE FIRST DEGREE**  
**(Violation of Order of Protection**  
**with a Previous Conviction)**  
**Penal Law § 215.51 (c)**  
**(Committed on or after Nov. 1, 2006)<sup>1</sup>**  
**(Revised July 2016)<sup>2</sup>**

The (specify) count is Criminal Contempt in the First Degree.

Under our law, a person is guilty of Criminal Contempt in the First Degree when<sup>3</sup>, 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 under our law,<sup>4</sup> [(or) by a court of competent

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<sup>1</sup> This section took effect January 1, 1995 (see L 1994, ch 222 and ch 224). However, the predicate crime was then limited to “criminal contempt in the second degree.”

Effective December 22, 1998, the alternative of “a court of competent jurisdiction in another state territorial or tribal jurisdiction” was added.

Effective November 1, 2003, the predicate crime of “criminal contempt in the first degree” was added.

Effective November 1, 2006, the predicate crime of “aggravated criminal contempt” was added.

With respect to a crime charged prior to November 1, 2006, the charge may be adapted for use as applicable on the date charged.

<sup>2</sup> The 2016 revision was to account more clearly for the applicable predicate offenses as set forth in footnote one, and then in the text of the definition.

<sup>3</sup> At this point, the statute continues: “he or she commits the crime of criminal contempt in the second degree as defined in subdivision three of section 215.50 of this article...” That language has been omitted and instead the definition of criminal contempt in the second degree is incorporated here and in the “definition” section of the charge. See footnote five.

<sup>4</sup> At this point in the statute, the definition lists the statutes “under” which the applicable order must have been issued, i.e., Domestic Relations Law sections 240 and 252, Family Court Act articles four, five, six and eight, and CPL 530.12 (“Protection for victims of family violence”). Note that CPL 530.13, entitled “Protection of victims of crimes, other than family offenses,” is not included in that listing of applicable statutes.

jurisdiction in another state (territorial or tribal jurisdiction)], he or she intentionally disobeys or resists such order<sup>5</sup> by violating that part of the order which requires the respondent or defendant to stay away from the person or persons on whose behalf the order was issued, [and where the defendant has been previously convicted of the crime of (aggravated criminal contempt *or* criminal contempt in the first degree *or* criminal contempt in the second degree) for violating an order of protection as described herein<sup>6</sup> within the preceding five years].<sup>7</sup>

The following term used in that definition has a special meaning:

A person INTENTIONALLY disobeys or resists an order of protection which requires the respondent or defendant to stay away from the person or persons on whose behalf the order was issued when that person's conscious objective or purpose is to do so.<sup>8</sup>

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

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<sup>5</sup> The statute initially provides that the defendant is guilty of this crime if he or she committed Criminal Contempt in the Second Degree. The definition of that crime (i.e., "intentionally disobeys or resists") has been incorporated here into the definition of this crime.

<sup>6</sup>*People v Barrett*, 188 A.D.3d 1736 [4<sup>th</sup> Dept 2020] held that the words: "as described herein," require proof of a violation of a stay-away provision of an order of protection.

<sup>7</sup> The bracketed element must be charged in a special information, and after commencement of trial the defendant must be arraigned on that special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add it to the definition of the offense and the list of elements (see CPL 200.60; See *People v Cooper*, 78 NY2d 476, 481-482 [1991]).

<sup>8</sup> See Penal Law § 15.05 (1).

case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), the (specify) Court of New York [(or) a Court of competent jurisdiction in another state (territorial or tribal jurisdiction)] 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 when such order was issued;
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), disobeyed or resisted that order by violating that part of the order which required him/her to stay away from (specify); and
4. That the defendant did so intentionally.<sup>9</sup>

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.

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<sup>9</sup> If the defendant has admitted the previous conviction, the crime will consist of *only* the four elements listed above. If the defendant has denied the previous conviction or has remained mute, add as the fifth element, selecting the appropriate alleged prior conviction:

“and 5. That the defendant has been previously convicted of the crime of (aggravated criminal contempt or criminal contempt in the first degree or criminal contempt in the second degree) for violating an order of protection within the preceding five years.”