

**RIOT IN THE SECOND DEGREE**  
**Penal Law § 240.05**  
**(Committed on or after Sept. 1, 1967)**

The (specify) count is Riot in the Second Degree.

Under our law, a person is guilty of Riot in the Second Degree when, simultaneously with four or more other persons, he or she engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.

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

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY causes or creates a grave risk of causing public alarm when his or her conscious objective or purpose is to do so.<sup>1</sup>

A person RECKLESSLY causes or creates a grave risk of causing public alarm when that person

engages in conduct which causes or creates a grave and unjustifiable risk of causing public alarm,

and when he or she 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 that situation.<sup>2</sup>

---

<sup>1</sup> See Penal Law 15.05(1)

<sup>2</sup> See Penal Law 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

*[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.<sup>3]</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, each of the following two elements:

1. That on or about   (date)  , in the county of  (county) , the defendant,  (defendant's name) , simultaneously with four or more other persons, engaged in tumultuous and violent conduct, and

2. That the defendant thereby intentionally or recklessly caused or created a grave risk of causing public alarm.

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.

---

<sup>3</sup> See Penal Law 15.05(3).