

**MENACING SECOND DEGREE  
(A Misdemeanor)  
(Reasonable Fear of Injury; Weapon)  
PENAL LAW 120.14(1)  
(Committed on or after Nov. 1, 1995)<sup>1</sup>**

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 intentionally places or attempts to place another person in reasonable fear of physical injury [or serious physical injury or death<sup>2</sup>] by displaying a deadly weapon [or dangerous instrument] [or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm].

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,"] "intentionally" and "deadly weapon" ["dangerous instrument"] ["displaying what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm."]

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>3</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

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<sup>1</sup> November 1, 1995, was the effective date of an amendment to the definition of "deadly weapon" [Penal Law § 10.00(12)] to add a "metal knuckle knife." Excluding that change, this charge is applicable to crimes committed on or after November 1, 1992.

<sup>2</sup> We would note that every "serious physical injury" and "death" must include physical injury. [Footnote revised: March, 2006].

<sup>3</sup> Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

loss or impairment of the function of any bodily organ.<sup>4]</sup>

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] by displaying a deadly weapon [*or* dangerous instrument] [*or* what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm] when that person's conscious objective or purpose is to do so.<sup>5</sup>

DEADLY WEAPON means:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

[*or* a switchblade knife defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.]

[*or* a gravity knife defined as any knife having a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.]

[*or* a pilum ballistic knife defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.]

[*or* a dagger]

[*or* a billy]

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<sup>4</sup> Penal Law § 10.00(10).

<sup>5</sup> See Penal Law § 15.05(1).

[or a blackjack]  
[or metal knuckles]  
[or a metal knuckle knife].<sup>6</sup>

[DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury. Under that definition, death or other serious physical injury need not, in fact, be caused.]<sup>7</sup>

[The element that the person DISPLAYS WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM does not require the People to prove that the object displayed was actually a firearm. What the People are required to prove is that the person consciously displayed, or manifested the presence of, something that could reasonably be perceived as a pistol, revolver, rifle, shotgun, machine gun or other firearm and that the person to whom the item was displayed or manifested perceived it as a pistol, revolver, rifle, shotgun, machine gun or other firearm.<sup>8</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), placed or attempted to place (specify) in reasonable fear of physical injury [or

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<sup>6</sup> Penal Law § 10.00(12); See Penal Law § 265.00 for the definitions of "switchblade knife," "gravity knife," and "pilum ballistic knife."

<sup>7</sup> Penal Law § 10.00(13).

<sup>8</sup> See *People v Lopez*, 73 NY2d 214 (1989); *People v Baskerville*, 60 NY2d 374 (1983).

serious physical injury] [*or* death], by displaying a deadly weapon [*or* dangerous instrument] [*or* what appeared to be a pistol, revolver, rifle, shotgun, machine gun or other firearm]; and

2. That the defendant did so intentionally.

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.