INTIMIDATING A VICTIM OR WITNESS
SECOND DEGREE
(D Felony)
PENAL LAW 215.16
(Committed on or after Nov. 1, 1985)

The _____ count is Intimidating a Victim or Witness in the Second Degree.

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

Select appropriate alternative:

Intentionally causes 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 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

Recklessly causes physical injury to another person by intentionally damaging the property of such other person or another person, for the purpose of obstructing, delaying, preventing or impeding such other person or another person from communicating, [or 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 flight [1] therefrom. [2]

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," "intentionally," [and recklessly]

PHYSICAL INJURY means impairment of physical condition or substantial pain.[3]

A person INTENTIONALLY [causes physical injury to another] [damages the property of another] when that person's conscious objective or purpose is to do so.[4]

[A person acts RECKLESSLY with respect to physical injury when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to another person will occur,

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

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[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..."

[3] Penal Law § 10.00(9); *See People v. Chiddick*, 8 NY3d 445 (2007).

[4] *See* Penal Law § 15.05(1).

standard of conduct that a reasonable person would observe in the situation. [5]

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.[6]]

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 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 communicated information relating to a criminal transaction to any court, grand jury, prosecutor, police

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[5] *See* Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692 (1990).

[6] *See* Penal Law § 15.05(3).

officer or peace officer; and

Or

2. That the defendant did so recklessly by intentionally damaging the property of (specify) or another person, for the purpose of obstructing, delaying, preventing or impeding (specify) or another person from communicating, [or on account of (specify) or another person having 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.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Intimidating a Victim or Witness 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 any one or more of those elements, you must find the defendant not guilty of the crime of Intimidating a Victim or Witness in the Second Degree as charged in the _____ count.