

**CRIMINAL CONTEMPT
FIRST DEGREE
(E Felony)
(Violation of Order of Protection;
Reckless Damage to Property;
Damage More Than \$250¹)
PENAL LAW 215.51(d)
(Committed on or after Jan. 1, 1995)**

The _____ count is Criminal Contempt in the First Degree.

Under our law, a person is guilty of Criminal Contempt in the First Degree when, 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, he or she recklessly damages the property of the person for whose protection such order was issued in an amount exceeding two hundred fifty dollars (\$250).

The term "recklessly" used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

A defendant RECKLESSLY damages the property of a person for whose protection an order was issued when that defendant does so by engaging in conduct which creates a substantial and unjustifiable risk that such damage will occur, and

when that defendant 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

¹See Penal Law § 145.00(3).

reasonable person would observe in the situation.²

[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.^{3]}

The amount of damage to property is determined by the cost of repair or the replacement value, whichever is less.⁴

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 four elements:

1. That on or about (date), the (specify) court 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), in violation of the order, recklessly damaged the property of (specify) in an amount exceeding two hundred fifty dollars (\$250); and

²See Penal Law § 15.05(3); *People v Boutin*, 75 NY2d 692 (1990).

³See Penal Law § 15.03(3).

⁴See *People v. Woodward*, 148 AD2d 997 (4th Dept. 1989); *People v. Gina*, 137 AD2d 555 (2d Dept. 1988); *People v. Simpson*, 132 AD2d 894 (3d Dept. 1987).

4. That the defendant did so recklessly.

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 Criminal Contempt in the First 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 Criminal Contempt in the First Degree as charged in the _____ count.