

**MENACING IN THE SECOND DEGREE**  
**(Third degree and violate OP)**  
**Penal Law § 120.14(3)**  
**(Committed on or after Dec. 22, 1998)**

The (*specify*) count is Menacing in the Second Degree.

Under our law, a person is guilty of Menacing in the Second Degree when,<sup>1</sup> by physical menace, he or she intentionally places or attempts to place another person in fear of death or imminent serious physical injury or imminent physical injury, in violation of that part of:

*Select appropriate alternative:*

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, pursuant to the [family court act / the criminal procedure law <sup>2</sup>].

an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

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

A person acts INTENTIONALLY when that person's conscious objective or purpose is to cause a particular result or

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<sup>1</sup> At this point the statute reads: “when he or she commits the crime of menacing in the third degree.” This instruction, therefore, substitutes the definition of “menacing in the third degree” and thereafter continues with the definition of the instant crime which begins with the words “in violation of ...”

<sup>2</sup> The statute specifies and limits its application to an order of protection issued pursuant to “article eight of the Family Court Act and section 530.12 of the Criminal Procedure Law.”

to engage in particular conduct.<sup>3</sup> Thus, a person intentionally places another person in fear of death or imminent serious physical injury or imminent physical injury by physical menace when that person's conscious objective or purpose is to do so.<sup>4</sup>

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>5</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 loss or impairment of the function of any bodily organ.<sup>6</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), by physical menace, placed or attempted to place (specify) in fear of death, or imminent serious physical injury, or imminent physical injury;
2. That the defendant did so intentionally; and
3. That the defendant did so in violation of:

Select appropriate alternative:

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

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

<sup>2</sup> *Id.*

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

<sup>4</sup> Penal Law § 10.00(10).

issued, pursuant to the [family court act / the criminal procedure law].

an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

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.