**MENACING SECOND DEGREE

(Reasonable Fear of Injury; Weapon)

Penal Law § 120.14(1)

(Committed on or after Nov. 1, 1992)1**Revised April, 20181

The (*specify*) 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* death2] by displaying:

*Select appropriate alternative(s):*

a deadly weapon

a dangerous instrument

what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

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

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

1 This charge applies when the crime was committed on or after November 1, 1992, except as to the following weapons which were added to the definition of "deadly weapon" [Penal Law § 10.00(12)] after that date:

November 1, 1995, was the effective date of an amendment to the definition of "deadly weapon" to add a "metal knuckle knife." L. 1995, ch. 219.

November 1, 2008, was the effective date of an amendment also to that definition to add "plastic knuckles." L. 2008, ch. 257.

The 2018 revision was to include the statutory additions to the definition of "deadly weapon" and the decisional law definitions of weapons as set forth in footnote 6.

2 We would note that every "serious physical injury" and "death" must include physical injury.

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

[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.4]

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.5

DEADLY WEAPON means:

*Select appropriate alternative:*

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

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.

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.

a metal knuckle knife, defined as a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

metal knuckles, defined as a metal object with multiple holes,

4 Penal Law § 10.00(10).

5 *See* Penal Law § 15.05(1).

through which individual places his or her fingers so that a metal bar rests atop the individual's knuckles.

a billy, defined as a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes.

a dagger

a blackjack

plastic knuckles. 6

[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.]7

[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

6 Penal Law § 10.00(12) defines "deadly weapon." See Penal Law § 265.00 for the definitions of "switchblade knife," "gravity knife," "pilum ballistic knife" and "metal knuckle knife"; *People v. Aragon*, 28 N.Y.3d 125 (2016) (for the definition of "metal knuckles"); *People v. Ocasio*, 28 N.Y.3d 178 (2016) (for the definition of "billy").

There is no controlling statutory or decisional law definition of "plastic knuckles" albeit the legislative memorandum in support of adding that term equated it with "brass [metal] knuckles"; thus, for the definition of "plastic knuckles," a court may wish to consider using the definition of "metal knuckles," substituting "plastic object" for "metal object" and "plastic bar" for "metal bar."

7 Penal Law § 10.00(13).

a pistol, revolver, rifle, shotgun, machine gun or other firearm.8]

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* 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.

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.

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