

## UNLAWFUL ASSEMBLY

### Penal Law § 240.10

**(Committed on or after Sept. 1, 1967)**

The (specify) count is Unlawful Assembly.

Under our law, a person is guilty of Unlawful Assembly when he or she assembles with four or more other persons

for the purpose of engaging or preparing to engage with them in imminent<sup>1</sup> tumultuous and violent conduct likely to cause public alarm, or

when, being present at an assembly which either has or develops such purpose, he or she remains there with intent to advance that purpose.

The following term used in that definition has a special meaning:

Select appropriate alternative(s):

FOR THE PURPOSE refers to a person's conscious objective or purpose. Thus, a person acts for the purpose of engaging or preparing to engage in imminent tumultuous and violent conduct likely to cause public alarm when that person's conscious objective or purpose is to do so.<sup>2</sup>

INTENT similarly means conscious objective or purpose.

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<sup>1</sup> The term "imminent" has been added to accord with the requirements of the constitution. See *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969) ("Statutes affecting the right of assembly, like those touching on freedom of speech, must observe the established distinctions between mere advocacy and incitement to imminent lawless action"); *People v. Tolia*, 214 A.D.2d 57, 64 (1995); *People v. Biltsted*, 150 Misc. 2d 872, 879–80 (Crim. Ct., NY County, 1991).

<sup>2</sup> Cf. *People v. Smith*, 79 N.Y.2d 309, 314 (1992) "for the purpose of" in the robbery statute [Penal Law § 160.00] "was intended by the Legislature to be a mens rea element."

Thus, a person acts with intent to advance the purpose of engaging or preparing to engage with others in imminent tumultuous and violent conduct likely to cause public alarm when that person's conscious objective or purpose is to do so.<sup>3</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, the following element:

That on or about (date), in the County of (County), the defendant, (defendant's name)<sup>4</sup>

Select appropriate alternative(s):

assembled with four or more other persons for the purpose of engaging or preparing to engage with them in imminent tumultuous and violent conduct likely to cause public alarm,

[or]

being present at an assembly of four or more other persons which either has or develops the purpose of engaging or preparing to engage with them in imminent tumultuous and violent conduct likely to cause public alarm, he/she remained there with intent to advance that purpose.

If you find the People have proven beyond a reasonable doubt that element, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt that element, you must find the defendant not guilty of this crime.

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<sup>3</sup> See Penal Law § 15.05(1).

<sup>4</sup> When the defendant is charged in whole or in part as an accomplice, Court will add: "personally, or by acting in concert with another person." See Accomplice charge.