

MENACING A POLICE OFFICER OR PEACE OFFICER
Penal Law § 120.18
(Committed on or after Dec. 21, 2005)¹
Revised April, 2018 ¹

The (*specify*) count is Menacing a Police Officer [*or* Peace Officer].

Under our law, a person is guilty of Menacing a Police Officer [*or* Peace Officer] when he or she intentionally places or attempts to place a police officer [*or* peace officer] in reasonable fear of physical injury, [*or* serious physical injury or death²] by displaying a

[*Select appropriate alternative(s)*]:

deadly weapon

knife

pistol, revolver, rifle, shotgun, machine gun or other firearm, whether operable or not]

where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was a police officer [*or* peace officer].³

¹ This charge applies when the crime was committed on or after December 21, 2005, except as to the following weapon which was added to the definition of "deadly weapon" [Penal Law § 10.00(12)] after that date:

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

The 2018 revision was to include the statutory definition of "deadly weapon," including the 2008 addition to that definition, 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 If the status of the victim as a police or peace officer is at issue, refer to the definitions of "police officer" set forth in CPL § 1.20(34) and of "peace officer" set forth in CPL § 2.10.

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

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁴

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

⁴ Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

⁵ Penal Law § 10.00(10).

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

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY places or attempts to place a police officer [*or* peace officer] in reasonable fear of physical injury by displaying a weapon when his or her conscious objective or purpose is to do so.⁷

A person REASONABLY SHOULD HAVE KNOWN that the victim was a police officer [*or* peace officer] if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would have known that such intended victim was a police officer [*or* peace officer].⁸

A police officer [*or* peace officer] is engaged in the course of performing his or her OFFICIAL DUTIES when he or she is acting pursuant to his or her occupation as a police officer [*or*

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 See Penal Law § 15.05(1).

⁸ Cf. *People v. Goetz*, 68 NY2d 96 (1986).

peace officer], rather than as a private citizen.⁹

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), in the county of (county), the defendant, (defendant's name), placed or attempted to place (specify) in reasonable fear of physical injury [serious physical injury or death], by displaying a

[Select appropriate alternative(s):

deadly weapon

knife

pistol, revolver, rifle, shotgun, machine gun or other firearm, whether operable or not]

2. That the defendant did so intentionally;
3. That, at the time of the incident, (specify) was a police officer [*or* peace officer] in the course of performing his/her official duties; and
4. That, at the time of the incident, the defendant knew or reasonably should have known that (specify) was a police officer [*or* peace officer].

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

⁹ See *People v. Davis*, 43 NY2d 17 (1977); *People v. Woods*, 141 AD2d 684 (2nd Dept. 1988); *People v. Lanzot*, 67 AD2d 864 (1st Dept. 1979). This general definition is based on limited existing case law, and may need to be modified or amplified in light of the facts of the individual case and the arguments of the parties.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.