

**STALKING IN THE THIRD DEGREE**  
**(Three persons; three separate transactions)**  
**Penal Law § 120.50(1)**  
**(Committed on or after Dec. 1, 1999)**

The (specify) count is Stalking in the Third Degree.<sup>1</sup>

Under our law, a person is guilty of Stalking in the Third Degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at three or more specific persons, in three or more separate transactions, for which the actor has not been previously convicted, and he or she knows or reasonably should know that such conduct is likely to cause reasonable fear of material harm to the physical health, safety or property of each of the three or more persons, or a member of the person's immediate family, or a third party with whom the person is acquainted.

The following terms used in that definition have a special meaning:<sup>2</sup>

Intent means conscious objective or purpose. Thus, a

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<sup>1</sup> The instant crime is defined as follows: "A person is guilty of stalking in the third degree when he or she: (1) Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted." This instruction incorporates the crime of "stalking in the fourth degree" and adapts the language accordingly.

<sup>2</sup> There is no statutory definition of the term "course of conduct." *People v. Dickson*, 82 AD3d 1289, 1291 (3d Dept. 2011) held that it was not error to decline to define the term. *People v. Ubbink*, 120 AD3d 1574, 1575-76 (4th Dept. 2014), noted that "course of conduct" has been defined as "a series of acts 'evidencing a continuity of purpose'" (quoting *People v Payton*, 161 Misc 2d 170, 174 (Crim Ct., Kings County, 1994). See also *People v Murray*, 167 Misc 2d 857 (Crim. Ct., N.Y. County, 1995); *People v Monroe*, 183 Misc 2d 374 (Crim. Ct., N.Y. County, 2000). For an example of facts constituting a "course of conduct" see *People v Stuart*, 100 NY2d 412 (2003).

With respect to "reasonable fear," the court in *Stuart* wrote: "the fear must be reasonable and not idiosyncratic; the harm (or likely harm) must be material."

person INTENTIONALLY engages in a course of conduct directed at a specific person when his or her conscious objective or purpose is to do so.<sup>3</sup>

NO LEGITIMATE PURPOSE means there is no reason or justification to engage in a course of conduct directed at a person, other than to hound, frighten, intimidate or threaten the person.<sup>4</sup>

[IMMEDIATE FAMILY means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.<sup>5</sup>]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about [and between] (*date[s]*), in the County of (*County*), the defendant (*defendant's name*) engaged in a course of conduct directed at (*specify the names of each of the three or more persons*) in three or more separate transactions, for which the defendant has not been previously convicted;
2. That the defendant did so intentionally and for no legitimate purpose; and
3. That the defendant knew or reasonably should have known that such conduct was likely to cause reasonable fear of material harm to the physical health, safety or property of *each of [three or more of] the following persons: (specify)*, or a member of the person's immediate family, or a third party with whom the person is acquainted.

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<sup>3</sup> See Penal Law §15.05(1).

<sup>4</sup> *People v Stuart*, 100 NY2d 412, *supra*.

<sup>5</sup> Penal Law § 120.40(4).

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

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.