

**STALKING IN THE SECOND DEGREE**  
**(Twenty-one years or older)**  
**Penal Law § 120.55(4)**  
**(Committed on or after Dec. 1, 1999)**  
**(Revised Dec. 6, 2003)<sup>1</sup>**

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

Under our law, a person is guilty of Stalking in the Second Degree when he or she being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death.

The following term used in that definition has a special meaning:<sup>2</sup>

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY places or attempts to place a person who is under the age of fourteen in reasonable fear of physical

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<sup>1</sup> This charge was revised to reflect the decision in *People v. Stuart*, 100 NY2d 412 (2003).

<sup>2</sup> If in issue, the definition of the term or terms: "physical injury [Penal Law § 10.00(9)]" or "serious physical injury" [Penal Law § 10.00(10)] may be charged.

There is no statutory definition of the term "course of conduct." *People v. Dickson*, 82 AD3d1289, 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 Misc2d 170, 174 (Crim Ct., Kings County, 1994). See also *People v. Murray*, 167 Misc2d 857 (Crim. Ct., N.Y. County, 1995); *People v. Monroe*, 183 Misc2d 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."

injury, serious physical injury or death, when that person's conscious objective or purpose is to do so.<sup>3</sup>

It is not a defense to this crime that the actor did not know the age of the child or believed that the child was fourteen [14] years of age or more on the date of the crime.<sup>4</sup>

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

1. That on or about [and between] (date[s]), in the county of (county), the defendant (defendant's name) being twenty-one years of age or older,

[NOTE: Select appropriate alternative(s):

repeatedly followed (specify), or

engaged in a course of conduct, or

repeatedly committed acts over a period of time]; and

2. That the defendant thereby intentionally placed or attempted to place (specify), who was under the age of fourteen, in reasonable fear of physical injury, serious physical injury or death.

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.

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<sup>3</sup>See Penal Law §15.05(1).

<sup>4</sup> See Penal Law § 15.20(3).

