

**STALKING IN THE FIRST DEGREE**  
**(Commit crime during stalking)**  
**Penal Law § 120.60(2)**  
**(Committed on or after Dec. 1, 1999)**

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

Under our law, a person is guilty of Stalking in the First Degree when he or she,<sup>1</sup> with intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear

*Select appropriate alternative(s):*

physical injury [or serious physical injury<sup>2</sup>], [or]  
the commission of a sex offense against, [or]  
the kidnapping, [or]  
unlawful imprisonment, or  
death

of such person or a member of such person's immediate family, and, in the course and furtherance thereof, he or she commits the

---

<sup>1</sup> At this point, the statute states: "commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article...."

The charge here substitutes only the language of Penal Law § 120.50(3).

No charge is prepared where the predicate element is stalking in the second degree as defined in Penal Law § 120.55. If that crime is the predicate element, this instruction may be adapted to include the appropriate subdivision of stalking in the second degree as defined in Penal Law § 120.55.

<sup>2</sup> "Serious physical injury" is defined to include "physical injury." Penal Law § 10.10(9). Thus, there is no need to charge "serious physical injury" because only physical injury is required.

crime of (specify<sup>3</sup> )

The following terms used in that definition have a special meaning:<sup>4</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to harass, annoy or alarm a specific person when his or her conscious objective or purpose is to do so.<sup>5</sup> And, a 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>6</sup>

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>7</sup>

MEMBER OF A PERSON'S IMMEDIATE FAMILY means the spouse, former spouse, parent, child, sibling, or any other

---

<sup>3</sup> The statute specifies that the crime must be: a class A misdemeanor defined in Penal Law art. 130 (Sex Offenses), or a class E felony defined in Penal Law § 130.25, § 130.40 or § 130.85, or a class D felony defined in Penal Law § 130.30 or § 130.45.

<sup>4</sup> If in issue, the definition of the following term or terms may be charged: "sex offense" [see Penal Law § 120.40(3)], "kidnapping" [see Penal Law § 120.40(1)], or "unlawful imprisonment" [see Penal Law § 120.40(2)].

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 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."

<sup>5</sup> See Penal Law § 15.05(1).

<sup>6</sup> See Penal Law § 15.05(1).

<sup>7</sup> Penal Law § 10.00(9). See *People v. Chiddick*, 8 NY3d 445 (2007).

person who regularly resides or has regularly resided in the household of a person.<sup>8</sup>

A PERSON COMMITS THE CRIME OF (specify) when (define the crime).

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in this case, beyond a reasonable doubt, each of the following four 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);
2. That the defendant did so intentionally and with intent to harass, alarm or annoy (specify); and
3. That the course of conduct was likely to cause (specify) to reasonably fear

Select appropriate alternative(s):

physical injury to, [or]  
the commission of a sex offense against, [or]  
the kidnapping of, [or]  
the unlawful imprisonment of, [or]  
death of

himself/herself [or a member of his/her immediate family], and

4. That in the course and furtherance of such conduct, the defendant committed the crime of (specify).

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

---

<sup>8</sup> Penal Law § 120.40(4).

doubt any one or more of those elements, you must find the defendant not guilty of this crime.