

STALKING THIRD DEGREE
(A Misdemeanor)
(Intent to harass, annoy or alarm)
PENAL LAW 120.50(3)
(Committed on or after Dec. 1, 1999)
(Revised Dec. 6, 2003)¹

The _____ count is Stalking in the Third Degree.

Under our law a person is guilty of Stalking in the Third Degree when he or she 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 physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms:² "intent" [and] "intentionally" [and "immediate family"].³

INTENT means conscious objective or purpose. Thus, a

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

² If in issue, the definition of the term or terms: "physical injury [Penal Law § 10.00(9)," "serious physical injury [Penal Law § 10.00(10)," "sex offense [Penal Law § 120.40(3)]," "kidnapping [Penal Law § 120.40(1)," or "unlawful imprisonment [Penal Law § 120.40(2)," may be charged.

³ There is no statutory definition of the term "course of conduct." Some courts have proffered a definition. See *People v Payton*, 161 Misc2d170 (Crim. Ct., Kings County, 1994); *People v Murray*, 167 Misc2d 857 (Crim. Ct., N.Y. County, 1995); *People v Monroe*, 183 Misc2d 374 (Crim. Ct., N.Y. County, 2000). See *People v Stuart*. 100 NY2d 412 (2003) for an example of facts constituting a "course of conduct." As 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 acts with INTENT to harass, annoy or alarm a specific person when his or her conscious objective or purpose is to do so.⁴ 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.⁵

[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.⁶]

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 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*);
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

[NOTE: Select appropriate alternative(s):

physical injury to, [or]

serious physical injury to, [or]

the commission of a sex offense against, [or]

⁴See Penal Law §15.05(1).

⁵See Penal Law §15.05(1).

⁶ Penal Law §120.40(4).

the kidnapping of, [or]

the unlawful imprisonment of,[or]

death of

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

Therefore, if you find that the People have proven beyond a reasonable doubt each of these elements, you must find the defendant guilty of the crime of Stalking in the Third Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of these elements, you must find the defendant not guilty of the crime of Stalking in the Third Degree as charged in the _____ count.