

STALKING FIRST DEGREE
(D Felony)
(Causes physical injury)
(PENAL LAW 120.60(1))
(Committed on or after Dec. 1, 1999)
(Revised Dec. 6, 2003)¹

The _____ count is Stalking in the First Degree.

Under our law, a person is guilty of Stalking in the First Degree when he or she,²

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,

and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to such person.

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

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

² 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 such 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.

following terms: ³ “intent” and “intentionally,” “recklessly,” “physical injury”, and “immediate family.” ⁴

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.⁵ And, a person INTENTIONALLY engages in a course of conduct directed at a specific person, or intentionally causes physical injury to a person when his or her conscious objective or purpose is to do so.⁶

A person acts RECKLESSLY with respect to physical injury when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to another person will occur,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that

³ 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.

⁴ There is no statutory definition of the term “course of conduct.” Some courts have proffered a definition. *See People v Payton*, 161 Misc2d 170 (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.”

⁵ See Penal Law §15.05(1).

⁶ See Penal Law §15.05(1).

disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.⁷

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication.⁸]

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁹

SERIOUS PHYSICAL INJURY means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.¹⁰

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.¹¹

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)

⁶ See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

⁷ See Penal Law § 15.05(3).

⁹ Penal Law §10.00(9).

¹⁰ Penal Law §10.00(10).

¹¹ Penal Law §120.40(4).

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*);
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]

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 intentionally or recklessly caused physical injury to (*specify*).

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 First 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 First Degree as charged in the _____ count.