

**AGGRAVATED HARASSMENT
SECOND DEGREE
(A Misdemeanor)
(Harassment in the First Degree -
Stalking; Course of Conduct;
Repeated Acts; Previous Conviction)
PENAL LAW 240.30(4)
(Committed on or after May 24, 1994)**

The _____ count is Aggravated Harassment in the Second Degree.

Under our law, a person is guilty of Aggravated Harassment in the Second Degree when, with intent to harass, annoy, threaten or alarm another person, he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury.¹

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of

¹An additional element of the crime is that the defendant:

"has previously been convicted of the crime of harassment in the first degree within the preceding ten years."

That element must be charged in a special information, and after commencement of trial the defendant must be arraigned on that special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add the element to the definition of the offense and the list of elements. CPL § 200.60. See, *People v. Cooper*, 78 NY2d 476 (1991).

Penal Law § 240.25 does "not apply to activities regulated by the national labor relations act [29 USCA § 151 et seq.], as amended, the railway labor act [45 USCA § 151 et seq.], as amended, or the federal employment labor management act [probably refers to the Federal Service Labor-Management Relations Act, 5 USCA § 7101 et seq.], as amended.

"intent," "intentionally" [and] ["physical injury"] ["public place"].

INTENT means conscious objective or purpose.² Thus, a person acts with intent to harass, annoy, threaten or alarm another person when his or her conscious objective or purpose is to do so.

A person INTENTIONALLY harasses another person when his or her conscious objective or purpose is to do so.

[PHYSICAL INJURY means impairment of physical condition or substantial pain.³]

[PUBLIC PLACE means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.⁴]

[NOTE: Add where appropriate:

TRANSPORTATION FACILITY means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.⁵]

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, both of the following two elements:

²See, Penal Law § 15.05(1).

³See, Penal Law § 10.00(9).

⁴See, Penal Law § 240.00(1).

⁵See, Penal Law § 240.00(2).

1. That on or about (date), in the County of (county), the defendant, (defendant's name), harassed (specify) by repeatedly following (specify) in or about a public place or places or by engaging in a course of conduct which placed (specify) in reasonable fear of physical injury or by repeatedly committing acts which placed (specify) in reasonable fear of physical injury; and
2. That the defendant did so intentionally, and with intent to harass, annoy, threaten or alarm (specify).⁶

Therefore, if you find that the People haven proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Aggravated Harassment in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either or both of those elements, you must find the defendant not guilty of Aggravated Harassment in the Second Degree as charged in the _____ count.

⁶If the defendant has admitted the previous conviction, the crime will consist of only the two elements listed above. If the defendant has denied the previous conviction or has remained mute, add as the third element:

“and 3. That the defendant has previously been convicted of the crime of harassment in the first degree within the preceding ten years.”