

STALKING FOURTH DEGREE
(B Misdemeanor)
(Physical health, safety or property)
PENAL LAW 120.45(1)
(Committed on or after Dec. 1, 1999)
(Revised Dec. 6, 2003)¹

The _____ count is Stalking in the Fourth Degree.

Under our law, a person is guilty of Stalking in the Fourth Degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct is likely to cause reasonable fear of material harm to the physical health, safety or property of

[NOTE: Select appropriate alternative(s):

such person, [or]

a member of such person's immediate family [or]

a third party with whom such person is acquainted].

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: "intentionally," [and] "no legitimate purpose" [and "immediate family"].²

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

² 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*, *supra*, 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."

Intent means conscious objective or purpose. Thus, 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.³

NO LEGITIMATE PURPOSE means there is no reason or justification to engage in a course of conduct directed at a person, other than to hound, frighten, intimidate or threaten the person.⁴

[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.⁵]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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 for no legitimate purpose; and
3. That the defendant knew or reasonably should have known that such conduct was likely to cause reasonable fear of material harm to the physical health, safety or property of

[NOTE: Select appropriate alternative(s):

(specify), [or]

³ See Penal Law §15.05(1).

⁴ *People v Stuart, supra.*

⁵ Penal Law §120.40(4).

a member of (*specify*)'s immediate family [or]

a third party with whom (*specify*) is acquainted].

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 Fourth 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 Fourth Degree as charged in the _____ count.