

STALKING IN THE THIRD DEGREE
Stalking fourth degree and predicate conviction
Penal Law § 120.50(2)
(Committed on or after Dec. 1, 1999)

Note: The instant crime is defined as follows:

“A person is guilty of stalking in the third degree when he or she commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person,

and has previously been convicted, within the preceding ten years, of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense.”

With respect to the latter element (predicate crime against same victim or family member), the defendant must be arraigned upon a special information alleging same in accordance with the procedure set forth in CPL 200.60(3). *See People v. Cooper*, 78 NY2d 476 (1991).

If, upon such arraignment, the defendant admits the allegations of the special information, the court must not make any reference to that element in the definition of the instant crime or in listing its elements. Accordingly, the instruction for “stalking in the fourth degree” [Penal Law § 120.45], with the name of the crime changed to “stalking in the third degree,” applies.

If the defendant denies the allegations of the special information or remains mute, the instruction for “stalking in the fourth degree” [Penal Law § 120.45], with the name of the crime changed to “stalking in the third degree,” continues to apply except that the court must add the element (predicate crime against same victim or family member) to the definition of the crime, and to the list of elements to be proved; e.g.:

and (*specify element #*). That the defendant was previously convicted, within the preceding ten years, of (*specify*) and the victim of that crime was (*specify the name of the alleged victim of the present offense*) [or his

or her immediate family member].