

STALKING IN THE THIRD DEGREE
Stalking fourth degree and
prior Stalking fourth degree conviction
Penal Law § 120.50(4)
(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

and has previously been convicted within the preceding ten years of stalking in the fourth degree.

With respect to the latter element (predicate fourth-degree crime), 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,” 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,” 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) to the definition and the list of elements to be proved; e.g.

and (*specify element #*). That the defendant has previously been convicted within the preceding ten years of stalking in the fourth degree.