AGGRAVATED HARASSMENT
SECOND DEGREE
(Electronic or Mail Communication)
(A Misdemeanor)
PENAL LAW 240.30 (1)(a) and (b)
(Committed on or after July 23, 2014)[1]

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 another person, the actor

Select appropriate alternative:

communicates, anonymously or otherwise, *or*

causes a communication to be initiated anonymously or otherwise,

[*Select applicable means:* by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication],

a threat to cause physical harm to, or unlawful harm to the property of, such person [or a member of such person's same family or household[2]], and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property,

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[1] In *People v Golb,* 23 NY3d 455 (2014), the Court of Appeals held that the Penal Law former § 240.30 (1) was vague and overbroad and, therefore, unconstitutional. In response to that holding, the legislature passed the instant version of Penal Law § 240.30 (1), effective July 23, 2014.

[2] At this point, the statutory definition adds "as defined in subdivision one of section 530.11 of the criminal procedure law." That definition is recited in the definition section of this charge.

[or to the physical safety or property of a member of such person's same family or household].

The following terms have their own special meaning in our law: "intent" [and "members of the same family or household"]. I will now give you the meaning of that [those] terms.

INTENT means conscious objective or purpose.[3] Thus, a person acts with intent to harass another person when his or her conscious objective or purpose is to do so.

[MEMBERS OF THE SAME FAMILY OR HOUSEHOLD are:

Select appropriate alternative(s):

persons related by consanguinity or affinity[4];

persons legally married to one another;

persons formerly married to one another regardless of whether they still reside in the same household;

persons who have a child in common, regardless of whether such persons have been married or have lived together at any time;

persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors you may consider in determining whether a relationship is an "intimate relationship" include but are not limited to:

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[3] Penal Law § 15.05 (1).

[4] There is no statutory definition of "consanguinity" or "affinity." A dictionary definition of "consanguinity" is "relationship by descent from a common ancestor" (Random House Webster's Unabridged Dictionary [1999]). That dictionary's definition of "affinity" is "relationship by marriage or by ties other than those of blood (distinguished from consanguinity)."

the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship."[5]]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (*date)*, in the county of (*County*), the defendant, (*defendant's name*),

Select appropriate alternative:

communicated, anonymously or otherwise, [*Select applicable means:* by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication] ; *or*

caused a communication to be initiated anonymously or otherwise, [*Select applicable means:* by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication], that communicated

a threat to cause physical harm to, or unlawful harm to the property of (*specify*) [or a member of (*specify*)'s same family or household]; and

[5] CPL 530.11 (1) (e) (*see also* Family Court Act § 812 (1); *Jose M. v Angel*, 99 AD3d 243 (2d Dept 2012).

2. That the defendant knew or reasonably should have known that such communication would cause (*specify*) to reasonably fear harm to his/her physical safety or property, [or to the physical safety or property of a member of (*specify*)'s same family or household]; and

3. That the defendant did so with intent to harass (*specify*).

Therefore, if you find that the People have proven beyond a reasonable doubt each 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 any one or more of those elements, you must find the defendant not guilty of Aggravated Harassment in the Second Degree as charged in the _____ count.