

**STALKING IN THE FOURTH DEGREE**  
**(Mental or emotional health)**  
**Penal Law § 120.45(2)**  
**(Committed on or after Dec. 1, 1999)**  
**(Revised Dec. 6, 2003)<sup>1</sup>**

The (*specify*) 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 causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with

*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],

and the actor was previously clearly informed to cease that conduct.

---

<sup>1</sup> The 2003 revision was for the purpose of incorporating the holdings of *People v. Stuart*, 100 NY2d 412 (2003). This charge accordingly applies to crimes committed on or after December 6, 2003, except that the definition of "following" applies to a crime committed on or after Oct. 21, 2014.

The following terms used in that definition have a special meaning: <sup>2</sup>

The FOLLOWING of a person includes the unauthorized tracking of such person's movements or location through the use of a global positioning system or other device.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

[IMMEDIATE FAMILY means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or

---

2

There is no statutory definition of the term "course of conduct." *People v Dickson*, 82 AD3d1289, 1291 (3d Dept. 2011) held that it was not error to decline to define the term. *People v. Ubbink*, 120 AD3d 1574, 157576 (4th Dept. 2014), noted that "course of conduct" has been defined as "a series of acts 'evidencing a continuity of purpose'" (quoting *People v Payton*, 161 Misc 2d 170, 174 (Crim Ct., Kings County, 1994)). See also *People v Murray*, 167 Misc2d 857 (Crim. Ct., N.Y. County, 1995); *People v Monroe*, 183 Misc2d 374 (Crim. Ct., N.Y. County, 2000). For an example of facts constituting a "course of conduct" see *People v Stuart*, 100 NY2d 412 (2003).

With respect to "reasonable fear," the court in *Stuart* wrote: "the fear must be reasonable and not idiosyncratic; the harm (or likely harm) must be material."

<sup>3</sup> Penal Law § 120.45(2) last sentence. Added by L.2014, c. 184, § 1, eff. Oct. 21, 2014.)

<sup>4</sup> See Penal Law §15.05(1).

<sup>5</sup> *People v Stuart, supra*.

has regularly resided in the household of a person.<sup>6]</sup>

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, each of the following five 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;
3. That the conduct consisted of following, telephoning or initiating communication or contact with

*Select appropriate alternative(s):*

(specify), [or]

a member of (specify)'s immediate family [or]  
a third party with whom (specify) is acquainted];

4. That the defendant knew or reasonably should have known that such conduct would cause material harm to the mental or emotional health of (specify); and
5. That the defendant was previously clearly informed to cease such conduct.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

---

<sup>6</sup> Penal Law §120.40(4).