

STALKING SECOND DEGREE
(E felony)
(Weapon)
PENAL LAW 120.55(1)
(Committed on or after Dec. 1, 1999)
(Revised Dec. 6, 2003)¹
(Revised May 5, 2009)²

The _____ count is Stalking in the Second Degree.

Under our law a person is guilty of Stalking in the Second Degree

when he or she with intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family,

and in the course of and in furtherance of the commission of such offense:

displays, or possesses and threatens the use of (*specify item(s) listed in Penal Law § 120.55(1)(i)*) [or]

[displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm].

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

² This charge was revised to add the term "plastic knuckles" in accordance to the legislative change to the definition of "deadly weapon" contained in PL § 10.00(12) (L. 2008, c.257, § 1, eff. Nov. 1, 2008).

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: ³ “intent,” “intentionally,” [“immediate family,”] [“possess,”], [“firearm,”] [“dangerous instrument,”] [“deadly weapon,”] [“rifle,”] [“shotgun,”] [“machine gun”] [“displays what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm”]. ⁴

INTENT means conscious objective or purpose. Thus, a person acts with INTENT to harass, annoy or alarm a specific person when his or her conscious objective or purpose is to do so.⁵ And, 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.⁶

[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.⁷]

POSSESS means to have physical possession or otherwise

³ If in issue, the definition of the term or terms: "physical injury [Penal Law § 10.00(9)," "serious physical injury [Penal Law § 10.00(10)," "sex offense [Penal Law § 120.40(3)]," "kidnapping [Penal Law § 120.40(1)," or "unlawful imprisonment [Penal Law § 120.40(2)," may be charged.

⁴ 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*, 100 NY2d 412 (2003) 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.”

⁵ See Penal Law §15.05(1).

⁶ See Penal Law §15.05(1).

⁷ Penal Law §120.40(4).

to exercise dominion or control over tangible property.⁸

FIREARM means any pistol or revolver.⁹

[DANGEROUS INSTRUMENT means any instrument, article or substance, including a “vehicle”¹⁰ which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury¹¹].

[DEADLY WEAPON means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife,¹² gravity knife,¹³ pilum ballistic knife,¹⁴ metal knuckle knife,¹⁵ dagger, billy, blackjack, plastic knuckles or metal knuckles.¹⁶]

[RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade, to use the energy of the

⁸Penal Law §10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the Additional Charges to Penal Law article 265.

⁹ Penal Law §265.00(3). If the firearm involved is other than a pistol or revolver, see the Additional Charges section at the end of Penal Law article 265, and substitute the appropriate definition.

¹⁰For a definition of “vehicle”, see Penal Law §10.00(14).

¹¹Penal Law §10.00(13).

¹²For a definition of “switchblade knife”, see Penal Law §265.00(4).

¹³For a definition of “gravity knife,” see Penal Law §265.00(5).

¹⁴For a definition of “pilum ballistic knife,” see Penal Law §265.00(5-a).

¹⁵For a definition of “metal knuckle knife,” see Penal Law §265.00(5-b).

¹⁶Penal Law §10.00(12).

explosive in a fixed metallic cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger.^{17]}

[SHOTGUN means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger^{18]}.

[MACHINE GUN means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.^{19]}

[The element that the person “DISPLAY WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM” does not require the People to prove that the object displayed was actually a firearm. What the People are required to prove is that the person consciously displayed, or manifested the presence of, something that could reasonably be perceived as a pistol, revolver, rifle, shotgun, machine gun or other firearm and that the person to whom the item was displayed or manifested, perceived it as a pistol, revolver, rifle, shotgun, machine gun or other firearm.²⁰

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 four elements:

¹⁷Penal Law §265.00(11).

¹⁸ Penal Law §265.00(12).

¹⁹ Penal Law §265.00(1).

²⁰See *People v Lopez*, 73 NY2d 214 (1989); *People v Baskerville*, 60 NY2d 374 (1983).

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 individual);
2. That the defendant did so intentionally and with intent to harass, alarm or annoy (specify); and
3. That the course of conduct was likely to cause (specify) to reasonably fear

[NOTE: Select appropriate alternative(s):

physical injury to, [or]

serious physical injury to, [or]

the commission of a sex offense against, [or]

the kidnapping of, [or]

the unlawful imprisonment of, [or]

death of

himself/herself [or a member of his/her immediate family].

4. That in the course of and in furtherance of the commission of the offense, the defendant:

[Select appropriate alternative:

displayed, or possessed and threatened the use of (specify item(s) listed in Penal Law § 120.55(1)(i))

displayed what appeared to be a pistol, revolver, rifle, shotgun, machine-gun, or other firearm].

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 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 these elements, you must find the defendant not guilty of the crime of Stalking in the Second Degree as charged in the _____ count.