

AGGRAVATED HARASSMENT IN THE SECOND DEGREE
(Harassment First Degree with previous conviction)
Penal Law § 240.30 (5) [formerly (4)]¹
(Committed on or after May 24, 1994)

The (*specify*) 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, annoy, threaten or alarm another person, he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury.²

The following terms used in that definition have a special meaning:

¹ Effective December 24, 2012, this section was renumbered from Penal Law § 240.30 (4) to 240.30 (5).

² The statute defines the crime as follows: "A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she...5. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by [Penal Law § 240.25] within the preceding ten years." This charge inserts the language of harassment in the first degree.

The additional element of "has previously been convicted of the crime of harassment in the first degree... within the preceding ten years," must be charged in a special information, and after commencement of trial the defendant must be arraigned on that special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, the court must add the element to the definition of the offense and the list of elements (see CPL 200.60; *People v Cooper*, 78 NY2d 476 [1991]).

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

A person INTENTIONALLY harasses another person when his or her conscious objective or purpose is to do so.

[PHYSICAL INJURY means impairment of physical condition or substantial pain.⁴]

[PUBLIC PLACE means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.⁵]

[NOTE: Add where appropriate:

TRANSPORTATION FACILITY means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.⁶]

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, both of the following two elements:

³ See Penal Law § 15.05 (1).

⁴ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

⁵ Penal Law § 240.00 (1).

⁶ Penal Law § 240.00 (2).

1. That on or about *(date)*, in the County of *(County)*, the defendant, *(defendant's name)*, harassed *(specify)* by repeatedly following *(specify)* in or about a public place or places or by engaging in a course of conduct which placed *(specify)* in reasonable fear of physical injury or by repeatedly committing acts which placed *(specify)* in reasonable fear of physical injury; and
2. That the defendant did so intentionally, and with intent to harass, annoy, threaten or alarm *(specify)*.⁷

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

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

⁷ If the defendant has admitted the previous conviction, the crime will consist of only the two elements listed above. If the defendant has denied the previous conviction or has remained mute, add as the third element:

“and 3. That the defendant has previously been convicted of the crime of harassment in the first degree within the preceding ten years.”