**STALKING IN THE THIRD DEGREE
(Intent to harass, annoy or alarm)
Penal Law § 120.50(3)
(Committed on or after Dec. 1, 1999)
(Revised Dec. 6, 2003)**1

The (*specify*) count is Stalking in the Third Degree.

Under our law a person is guilty of Stalking in the Third 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.

The following terms used in that definition have a special meaning: 2

1The 2003 revision was for the purpose of incorporating the holdings of *People v. Stuart*,100 NY2d 412 (2003).

2 If in issue, the definition of the following terms may be charged: "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)."

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."

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.3 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.4

[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.5]

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 three 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 with intent to harass, alarm or annoy (*specify*); and
3. That the course of conduct was likely to cause (*specify*) to reasonably fear

*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].]

3*See* Penal Law §15.05(1).
4*See* Penal Law §15.05(1).
5 Penal Law §120.40(4).

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.