

STALKING IN THE FIRST DEGREE
(Causes physical injury)
Penal Law § 120.60(1)
(Committed on or after Dec. 1, 1999)
(Revised Dec. 6, 2003)¹

The (specify) count is Stalking in the First Degree.

Under our law, a person is guilty of Stalking in the First Degree when he or she,² 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

Select appropriate alternative(s):

physical injury [or serious physical injury³], [or]
the commission of a sex offense against, [or]
the kidnapping, [or]
unlawful imprisonment, or
death

of such person or a member of such person's immediate family, and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to such person.

The following terms used in that definition have a special

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

² At this point, the statute states: "commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article...." The charge here substitutes only the language of Penal Law § 120.50(3). No charge is prepared where the predicate element is stalking in the second degree as defined in Penal Law § 120.55. If such crime is the predicate element, this instruction may be adapted to include the appropriate subdivision of stalking in the second degree as defined in Penal Law § 120.55.

³ "Serious physical injury" is defined to include "physical injury." Penal Law § 10.10(9). Thus, there is no need to charge "serious physical injury" because only physical injury is required.

meaning: 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, or intentionally causes physical injury to a person when his or her conscious objective or purpose is to do so.⁶

A person acts RECKLESSLY with respect to physical injury when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to another person will occur,

and when he or she is aware of and consciously disregards that risk,

⁴ If in issue, the definition of the following term or terms may be charged: "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 AD3d 1289, 1291 (3d Dept. 2011) held that it was not error to decline to define the term. *People v Ubbink*, 120 AD3d 1574, 1575-76 (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 Misc2d 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."

⁵ See Penal Law § 15.05(1).

⁶ See Penal Law § 15.05(1).

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.⁷

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication.⁸]

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁹

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.¹⁰

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in this case, beyond a reasonable doubt, each of the following four 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);
3. That the course of conduct was likely to cause (specify) to reasonably fear

⁶ See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

⁸ See Penal Law § 15.05(3).

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

¹⁰ Penal Law § 120.40(4).

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],] and

4. That in the course and furtherance of such conduct, the defendant intentionally or recklessly caused physical injury to (specify).

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.