

**AGGRAVATED HARASSMENT FIRST DEGREE**  
**(Previous Conviction of Aggravated Harassment)**  
**Penal Law § 240.31(2)**  
(Committed on or after Nov. 1, 2019)

Note: Aggravated Harassment First Degree (Penal Law § 240.31(2) is defined as follows:

“A person is guilty of aggravated harassment in the first degree when, with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person’s race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

(2) commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article,

and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he or she has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years.

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As the culpable mental state for all subdivisions of PL 240.31, defining aggravated harassment in the first degree, is the same as that required for the commission of aggravated harassment in the second degree under subdivision three of section 240.30, the court may employ the language and model charge for aggravated harassment in the second degree under that subdivision.

With respect to the element, “previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or ... previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years,” the defendant must be arraigned upon a special information alleging same in accordance with the procedure set forth in CPL 200.60(3). See *People v. Cooper*, 78 NY2d 476 (1991).

If, upon such arraignment, the defendant admits the allegations of the special information, the court should:

[1] give the instruction for the crime of “aggravated harassment in the second degree” under subdivision three of section 240.30,

[2] wherever the name of the crime appears, change the name to “aggravated harassment in the first degree,” and

[3] not make any reference to the previous conviction in the definition of “aggravated harassment in the first degree” or in listing its elements.

If the defendant denies the allegations of the special information or remains mute, the court should

[1] give the instruction for the crime of “aggravated harassment in the second degree” under subdivision three of section 240.30,

[2] wherever the name of the crime appears, change the name to “aggravated harassment in the first degree,” and

[3] add the following to the definition of the crime:

Select appropriate alternative:

and has been previously convicted of the crime of aggravated harassment in the second degree for the commission conduct proscribed by the provisions of subdivision three of section 240.30,

and has been previously convicted of the crime of aggravated harassment in the first degree,

within the preceding ten years.

Then, add to the following to the list of elements to be proved:

and (specify element #). That the defendant has been previously convicted of the crime of

Select appropriate alternative:

and has been previously convicted of the crime of aggravated harassment in the second degree for the commission conduct proscribed by the provisions of subdivision three of section 240.30,

and has been previously convicted of the crime of aggravated harassment in the first degree,

within the preceding ten years.