

**STALKING**

**(N.J.S.A. 2C:12-10b) (Cases arising before March 21, 2009)**

Count \_\_\_\_\_ of this indictment charges defendant with the crime of stalking.

**(Read Indictment)**

The applicable statute provides, in pertinent part, that:

A person is guilty of stalking....if he purposely or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family.

In order for you to find defendant guilty, the State must prove each of the following elements beyond a reasonable doubt:

1. that defendant purposely or knowingly engaged in a course of conduct directed at a specific person,
2. that defendant purposely or knowingly engaged in that conduct repeatedly;
3. that when defendant engaged in the course of conduct, he/she had a conscious object or was aware that the course of conduct would cause a reasonable person to be in fear of bodily injury or death to himself/herself or to his/her immediate family.

**(Charge if applicable:**

4. that defendant's conduct did not occur during organized group picketing.<sup>1</sup>

The first element that the State must prove beyond a reasonable doubt is that defendant purposefully or knowingly engaged in a course of conduct directed at (name of person).

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<sup>1</sup> See N.J.S.A. 2C:12-10f.

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A person acts purposefully with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A person acts purposefully with respect to attendant circumstances if (he/she) believes or hopes that they exist. A person acts purposefully if (he/she) acts with design, with a specific intent, with a particular object or purpose, or if (he/she) means to do what (he/she) does.

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if (he/she) is aware that (his/her) conduct is of that nature, or that such circumstances exist or if (he/she) is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if (he/she) is aware that it is practically certain that (his/her) conduct will cause such a result.

Purpose and knowledge are conditions of the mind that cannot be seen and that can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that (he/she) had a certain state of mind when (he/she) engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of defendant's acts and conduct, from all that (he/she) said and did at the particular time and place, and from all surrounding circumstances.

Course of conduct means repeatedly maintaining visual or physical proximity to a person or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

Communication means any form of communication made by any means, including, but not limited to, any verbal or written communication, communications conveyed by any electronic device, which includes, but is not limited to, a wire, radio, electromagnetic, photoelectric or photo-optical system, telephone, including a cordless, cellular or digital telephone, computer, video recorder, fax machine, pager, or any other means of transmitting voice or data and communications made by sign or gesture.<sup>2</sup>

The second element that the State must prove beyond a reasonable doubt is that defendant purposely or knowingly engaged in that conduct repeatedly. I have already defined purposely and knowingly. Repeatedly means on two or more occasions.

The third element that the State must prove beyond a reasonable doubt is that when the defendant engaged in the course of conduct, he/she had the purpose or knew that the course of conduct would cause a reasonable person to be in fear of bodily injury or death to himself/herself or to his/her immediate family.

“Bodily injury” means physical pain, illness or any impairment of physical condition.<sup>3</sup>

“Immediate family” means a spouse, parent, child, sibling or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

**(Charge if Applicable)**

The fourth element that the State must prove beyond a reasonable doubt is that defendant’s conduct did not occur during organized group picketing.

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<sup>2</sup> N.J.S.A. 2C:1-14q.

<sup>3</sup> See N.J.S.A. 2C:11-1.

If you find that the State has proved every element of the offense beyond a reasonable doubt, then you must find defendant guilty of stalking. If you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find defendant not guilty.

**[Where the degree of the offense is in question, the following should be charged, if applicable.]<sup>4</sup>**

Stalking is ordinarily a crime of the fourth degree. It is, however, a crime of the third degree if defendant, in committing the crime of stalking:

**[Charge the appropriate alternative]**

- a. Violated an existing court order prohibiting the behavior;
- or**
- b. Committed a second or subsequent offense of stalking against the same victim;
- or**
- c. Was serving a term of imprisonment or was on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.<sup>5</sup>

If you find beyond a reasonable doubt that defendant committed the crime of stalking, but do not find that the State has proven, beyond a reasonable doubt, that in committing the crime, defendant (**charge as appropriate**: violated an existing court order prohibiting the behavior, committed a second or subsequent offense of stalking against the same victim, and/or was serving a

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<sup>4</sup> In most cases, where degree is in question, the trial court, after the jury returns its verdict of guilty to stalking, should then try the issue of degree before the same jury sequentially; first taking whatever additional proofs are necessary, then charging the jury with this additional language, under the principles set forth in State v. Chenique-Puey, 145 N.J. 334 (1996) and State v. Ragland, 105 N.J. 189 (1996).

<sup>5</sup> This sentencing alternative may require the trial court to sanitize the prior conviction. State v. Brunson, 132 N.J. 377 (1993). Further, the trial court probably must grant a defendant's offer to stipulate to this custodial element. Cf. State v. Alvarez, 318 N.J. Super. 137, 150-154 (App. Div. 1999).

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term of imprisonment or was on parole or probation as a result of a conviction for any indictable offense under the laws of this State, any other state or the United States), then your verdict must be guilty of fourth-degree stalking.

If you find beyond a reasonable doubt that defendant committed the crime of stalking and further find that the State has proven, beyond a reasonable doubt, that in committing the crime, defendant **(charge the appropriate:** violated an existing court order prohibiting the behavior, committed a second or subsequent offense of stalking against the same victim, and/or committed the crime while serving a term of imprisonment or while on parole or probation as a result of a conviction for any indictable offense under the laws of this State, any other state or the United States), then your verdict must be guilty of third-degree stalking.