

**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's course of conduct would cause a reasonable person to be in fear of bodily injury or death to himself/herself or to a member of his/her immediate family.

**(Charge if applicable:**

3. 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).

A person acts purposefully with respect to the nature of his/her conduct if it is his/her conscious object to engage in conduct of that nature. A person acts purposefully with respect to attendant circumstances if he/she believes or hopes that they exist. A person acts purposefully if

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

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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. 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 a 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.<sup>2</sup>

“Repeatedly” means on two or more occasions.<sup>3</sup>

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,

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

<sup>3</sup> See N.J.S.A. 2C:12-10a(2).

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photoelectric or photooptical 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>4</sup>

The second element that the State must prove beyond a reasonable doubt is that defendant's course of conduct would cause a reasonable person to be in fear of bodily injury or death to himself/herself or to a member of his/her immediate family.

"Bodily injury" means physical pain, illness or any impairment of physical condition.<sup>5</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 third element that the State must prove beyond a reasonable doubt is that defendant's conduct did not occur during organized group picketing.

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>6</sup>**

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<sup>4</sup> N.J.S.A. 2C:1-14q.

<sup>5</sup> See N.J.S.A. 2C:11-1.

<sup>6</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).

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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>7</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 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

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<sup>7</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 should grant a defendant's offer to stipulate to this custodial element.

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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.<sup>8</sup>

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Cf. State v. Alvarez, 318 N.J. Super. 137, 150-54 (App. Div. 1999).

<sup>8</sup> This charge was revised to comply with State v. Gandhi, 201 N.J. 161 (2010), in which the New Jersey Supreme Court held that the statute does not require a purposeful or knowing mental state with respect to the result component in the second element.