

STALKING

(N.J.S.A. 2C:12-10b) (Cases arising after 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 for his safety or the safety of a third person or suffer other emotional distress.

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 [fear for his/her safety] [fear for the safety of a third person] [suffer emotional distress].

(Charge if applicable:

3. that defendant's conduct did not occur during organized group picketing.¹

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 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.

¹ See N.J.S.A. 2C:12-10f.

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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 [choose appropriate] [maintaining a visual or physical proximity to a person] [directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property] [committing harassment² against a person] [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].³

“Repeatedly” means on two or more occasions.⁴

Communication means any form of communication made by any means, including, but not limited to, any verbal or written communication, communications conveyed by any

² If harassment is charged as the underlying actions, use the relevant portion of the Harassment Model Jury Charge. See N.J.S.A. 2C:33-4.

³ See N.J.S.A. 2C:12-10a(1).

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electronic device, which includes, but is not limited to, a wire, radio, electromagnetic, 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.⁵

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 fear for his/her safety] [to fear for the safety of a third person] [to suffer emotional distress].

“Emotional distress” means significant mental suffering or distress.⁶

“Cause a reasonable person to fear” means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.

(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.]⁷

If you have found defendant guilty of stalking, you must go on to determine whether the

⁴ See N.J.S.A. 2C:12-10a(2).

⁵ N.J.S.A. 2C:1-14q.

⁶ See N.J.S.A. 2C:12-10a(3).

⁷ 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

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State has proven beyond a reasonable doubt that, in committing the crime of stalking, defendant:

[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.⁸

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 (**choose appropriate**) [violated an existing court order prohibiting the behavior] [committed a second or subsequent offense of stalking against the same victim], [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 you should mark your verdict sheet accordingly.

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 (**choose appropriate**) [violated an existing court order prohibiting the behavior] [committed a second or subsequent offense of stalking against the same victim], [was serving a term of imprisonment or was on parole or probation as a result of a conviction for any indictable

State v. Chenique-Puey, 145 N.J. 334 (1996) and State v. Ragland, 105 N.J. 189 (1996).

⁸ 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

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offense under the laws of this State, any other state or the United States], then you should mark your verdict sheet accordingly.⁹

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

⁹ 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.