STALKING IN THE SECOND DEGREE
Stalking fourth degree and prior conviction
Penal Law § 120.55(2)
(Committed on or after Dec. 1, 1999)

Note: The instant crime is defined as follows:

"A person is guilty of stalking in the second degree when he or she commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person,

> and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense."

With respect to the latter element (predicate crime against same victim or family member), 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 must not make any reference to that element in the definition of the instant crime or in listing its elements. Accordingly, the instruction for "stalking in the third degree," as defined in Penal Law § 120.50(3), with the name of the crime changed to "stalking in the second degree," applies.

If the defendant denies the allegations of the special information or remains mute, the instruction for "stalking in the third degree" [Penal Law § 120.50(3)], with the name of the crime changed to "stalking in the second degree," continues to apply except that the court must add the element (predicate crime against same victim or family member) to the definition of the crime, and to the list of elements to be proved; e.g.,

> and (*specify element #)*. That the defendant was

previously convicted, within the preceding ten years, of (*specify*) and the victim of that crime was (*specify the name of the alleged victim of the present offense*) [or his or her immediate family member].