

**STALKING IN THE SECOND DEGREE**  
**Stalking fourth degree and**  
**prior Stalking third degree conviction**  
**Penal Law § 120.55(3)**  
**(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 fourth degree

and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person.”

With respect to the latter element (predicate third-degree crime), 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 fourth degree,” 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 fourth degree,” 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) to the definition and to the list of elements to be proved; e.g.:

and (*specify element #*). That the defendant has previously been convicted of stalking in the third degree.