

235.19B STALKING (PREVIOUSLY CONVICTED). FELONY. MISDEMEANOR.

NOTE WELL: This instruction is for use where it is alleged that a defendant has been previously convicted under this section. The first violation of this section is a misdemeanor. See N.C.P.I.-Crim. 235.19. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior is guilty of a felony. See N.C.P.I.-Crim. 235.19A.

NOTE WELL: If the defendant admits the previous conviction, the third element would be deleted. In such a case, a transcript of plea is required for the admission of the previous conviction. See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict and judgment. The mandate should be amended consistent with this change.

The defendant has been charged with stalking after having been previously convicted of a stalking offense.

For you to find the defendant guilty of this offense, the State must prove [two] [three] things beyond a reasonable doubt:

First, that the defendant willfully [on more than one occasion harassed¹] [engaged in a course of conduct² directed at] the victim without legal purpose.

(And) Second, that the defendant at that time knew or should have known that the [harassment] [course of conduct] would cause a reasonable person to:

- a. [fear for [that person's safety] [the safety of that person's [immediate family] [close personal associates]. One is placed in reasonable fear when a person of reasonable firmness, under the same or similar circumstances, would fear [death] [bodily injury].]

- b. [suffer substantial emotional distress by placing that person in fear of [death] [bodily injury] [continued harassment]].³

*NOTE WELL: The third element below should be given where there is evidence to support a charge on a previous conviction and the defendant denies a previous conviction or remains silent. If the defendant admits the previous conviction, the third element would be deleted. In such a case, a transcript of plea is required for the admission of the previous conviction. See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict and judgment. The mandate should be amended consistent with this change.*⁴

(And Third, that at the time the defendant was stalking, the defendant had been convicted of the following offense:

On (*name date*), the defendant in (*name court*) [was convicted of] [plead guilty to] the offense of stalking, that was committed on (*name date*).)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date(s), the defendant willfully [on more than one occasion harassed] [engaged in a course of conduct directed at] the victim without legal purpose, (and) that the defendant at that time knew or should have known that the [harassment] [course of conduct] would cause a reasonable person to:

- a. [fear for [that person's safety] [the safety of that person's [immediate family] [close personal associates]]].
- b. [suffer substantial emotional distress by placing that person in fear of [death] [bodily injury] [continued harassment]],

(and that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] stalking, that was committed on (*name date*))⁵, it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious stalking, but will consider whether the defendant is guilty of misdemeanor stalking. Misdemeanor stalking differs from felonious stalking in that it is not necessary for there to be a court order in effect prohibiting the defendant from stalking.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant willfully [on more than one occasion harassed] [engaged in a course of conduct directed at] the victim without legal purpose, and that the defendant at that time knew or should have known that the [harassment] [course of conduct] would cause a reasonable person to:

- a. [fear for [that person's safety] [the safety of that person's [immediate family] [close personal associates]]],
- b. [suffer substantial emotional distress by placing that person in fear of [death] [bodily injury] [continued harassment]],

it would be your duty to return a verdict of guilty of misdemeanor stalking. If you do not so find or have a reasonable doubt as to one or both of these things, it would be your duty to return a verdict of not guilty.

1. For a definition of "harasses or harassment" see N.C. Gen. Stat. § 14-277.3A(b)(2).

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2. For a definition of "course of conduct" see N.C. Gen. Stat. § 14-277.3A(b)(1).

3. *State v. Ferebee*, 137 N.C. App. 710 (2000).

4. *See Old Chief v. U.S.*, 519 U.S. 172 (holding that the district court abuses its discretion when it denies defendant's offer to admit to evidence of prior conviction element of offense and instead admits full record of prior conviction.)

5. If the third element was deleted above, this parenthetical phrase would not be given.