

1 **14-331. Stalking; essential elements.**

2 For you to find the defendant guilty of stalking [as charged in Count
3 _____],¹ the state must prove to your satisfaction beyond a reasonable doubt each
4 of the following elements of the crime:

5 1. The defendant knowingly pursued a pattern of conduct by, on more than one
6 occasion, [directly or indirectly] [or] [using a third party²]³ engaging in any of the following acts:

7 [(a) following _____ (*name of person*)]

8 [(b) monitoring _____ (*name of person*)]

9 [(c) placing _____ (*name of person*) under surveillance]

10 [(d) threatening _____ (*name of person*)]

11 [(e) communicating [to] [or] [about] _____ (*name of person*)];³

12 [2. In pursuing the pattern of conduct the defendant was not acting within the scope of
13 [lawful employment] [or] [constitutionally protected activity,]³⁴

14 3. [Although some of the acts constituting the pattern of conduct were directed at other
15 people, the] [The]³ overall pattern of conduct was directed at _____ (*name of victim*);

16 4. The defendant intended

17 [to place _____ (*name of victim*) in reasonable apprehension of
18 [death] [bodily harm] [sexual assault] [confinement or restraint]]

19 [or]

20 [to cause _____ (*name of victim*) to reasonably fear the [death]
21 [bodily harm] [sexual assault] [confinement or restraint] of _____ (*name(s) of other*
22 *individual(s)*)].^{3, 5}

1 The Committee believes that UJI 14-132 NMRA (Unlawfulness as an element) is a general
2 instruction not directly applicable to the stalking statute, which has a specific definition of “lawful
3 authority” as “within the scope of lawful employment or constitutionally protected activity.”
4 Section 30-3A-3(B)(1). The original 1997 exceptions to the stalking statute are specific,
5 affirmative, categorical exceptions to what otherwise is unlawful conduct.

6 By inserting “without lawful authority” into the 2009 revision of Section 30-3A-3, the Legislature
7 appears to have both expanded the range of conduct and, when there is evidence on the issue, made
8 proof of acting without lawful authority an element of the offense—not an affirmative defense to
9 be raised by the defendant. An unlawfulness instruction is not required “when there is *no evidence*
10 of lawful behavior, and hence the element omitted from the instructions was not factually in
11 issue[.]” *State v. Peterson*, 1998-NMCA-049, ¶ 10, 125 N.M. 55, 956 P.2d 854 (emphasis added)
12 (internal quotation marks and citation omitted)[~~(emphasis added)~~]. Similarly, where there is no
13 evidence regarding the scope of the defendant’s employment or constitutionally protected activity,
14 there is no requirement to give the bracketed second element.

15 The individual, enumerated acts constituting the pattern of conduct need not be directed at the
16 victim; it is the overall pattern of conduct which must reasonably affect the victim. *See, e.g., Best*
17 *v. Marino*, 2017-NMCA-073, ¶¶ 2, 3 n.2, 404 P.3d 450 (affirming district court’s determination
18 that the respondent had committed stalking by, in relevant part, “posting of statements and
19 photographs related to Petitioner on (1) Respondent’s own website; (2) Respondent’s own
20 Facebook and other social media pages; and (3) third-party controlled Facebook and other social
21 media pages”). For example, a defendant stalking [his]a former partner might use a third party to
22 place the victim’s children under surveillance and follow them and later indirectly communicate
23 to the victim by having a different third party send [her] the following text: “Those are cute twins

1 you have going to Sunshine Elementary. It would be a shame if a car ran over them as they were
2 walking home along Elm Street.”

3 Because the essential element of a “pattern of conduct” requires two or more of the enumerated
4 acts on more than one occasion, the acts which must be proven may occur on more than one date.

5 The Committee believes that due process and double jeopardy require that the dates encompassing
6 all of the acts constituting the alleged pattern should be presented to the jury.

7 [Adopted by Supreme Court Order No. 21-8300-010~~], effective for all cases filed or pending on~~
8 ~~or after December 31, 2021~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]