

**MANSLAUGHTER FIRST DEGREE
(B Felony)
(Recklessly Causing Child's Death;
Intent to Cause Child Physical Injury)
PENAL LAW 125.20(4)
(Committed on or after Nov. 1, 1990)**

The _____ count is Manslaughter in the First Degree.

Under our law, a person is guilty of Manslaughter in the First Degree when, being eighteen (18) years old or more and with intent to cause physical injury to a person less than eleven (11) years old, he or she recklessly engages in conduct which creates a grave risk of serious physical injury to such person and thereby causes the death of such person.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms:¹ "physical injury," "serious physical injury," "intent," and "recklessly."

PHYSICAL INJURY means impairment of physical condition or substantial pain.²

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.³

INTENT means conscious objective or purpose.⁴ Thus, a

¹ If causation, "death," or "person" is in issue, see Additional Charges at the end of this article.

² See Penal Law § 10.00(9).

³ See Penal Law § 10.00(10).

⁴ See Penal Law § 15.05(1).

person acts with intent to cause physical injury to a person less than eleven (11) years old when that person's conscious objective or purpose is to cause physical injury to a person less than eleven (11) years old.

A person acts RECKLESSLY with respect to this count when that person:

engages in conduct which creates a substantial, unjustifiable, and grave risk that serious physical injury to a person less than eleven (11) years old will occur,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.⁵

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication.⁶]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused the death of a person less than eleven (11) years old, namely, (specify);

⁵ See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

⁶ See Penal Law § 15.05(3).

2. That the defendant did so by recklessly engaging in conduct which created a grave risk of serious physical injury to (specify);
3. That the defendant acted with the intent to cause physical injury to (specify); and
4. That, at such time, the defendant was eighteen (18) years old or more.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Manslaughter in the First Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Manslaughter in the First Degree as charged in the _____ count.