

**AGGRAVATED MURDER**  
**(A-I Felony)**  
**PENAL LAW 125.26**  
**(Committed on or after Dec. 21, 2005)**

The \_\_\_\_\_ count is Aggravated Murder.

Under our law, a defendant is guilty of Aggravated Murder when, with intent to cause the death of another person, he or she causes the death of such person, who was

*Select the appropriate alternative:*

a police officer who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the victim was a police officer,

a [uniformed court officer] [or parole officer][or probation officer][or employee of the division for youth] who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the victim was such a [uniformed court officer] [parole officer] [probation officer] [employee of the division for youth],

an employee of a [state correctional institution] [or local correctional facility] who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the victim was an employee of a [state correctional institution] [local correctional facility],

and the defendant was more than eighteen years old at the time of the commission of the crime.<sup>1</sup>

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<sup>1</sup> The definition of the crime has a “transferred intent” provision. If applicable, the charge should be modified accordingly.

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<sup>2</sup>: "intent," "reasonably should have known," and "official duties."

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause the death of another person when his or her conscious objective or purpose is to cause the death of that person.<sup>3</sup>

A person REASONABLY SHOULD KNOW that a person is a (specify) if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would know that such person is a (specify).<sup>4</sup>

A (specify) is engaged in the course of performing his or her OFFICIAL DUTIES when he or she is acting pursuant to his or her occupation as a (specify), rather than as a private citizen.<sup>5</sup>

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 five elements:

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<sup>2</sup> If causation, "death," or "person" is in issue, see Additional Charges at the end of this article. Additionally, if the status of the deceased as a police or peace officer is at issue, refer to the definitions of "police officer" set forth in CPL § 1.20(34) and of "peace officer" set forth in CPL § 2.10.

<sup>3</sup> See Penal Law § 15.05(1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

<sup>4</sup> Cf., *People v. Goetz*, 68 NY2d 96 (1986).

<sup>5</sup> See, *People v. Davis*, 43 NY2d 17 (1977); *People v. Woods*, 141 AD2d 684 (2nd Dept. 1988); *People v. Lanzot*, 67 AD2d 864 (1st Dept. 1979). This general definition is based on limited existing case law, and may need to be modified or amplified in light of the facts of the individual case and the arguments of the parties.

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused the death of (victim);
2. That the defendant did so with the intent to cause the death of (victim);
3. That, at the time of the killing, (victim) was a (specify) engaged in the course of performing his/her official duties;
4. That, at the time of the killing, the defendant knew or reasonably should have known that (victim) was a (specify); and
5. That the defendant was more than eighteen (18) years old at the time of the commission of the crime.

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 Aggravated Murder 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 Aggravated Murder as charged in the \_\_\_\_\_ count.

*[NOTE: If either of the affirmative defenses -- Extreme Emotional Disturbance (§ 125.26(2)(a)) or Aiding a Suicide (§ 125.26(2)(b)) -- applies, omit the final two paragraphs of the above charge, and substitute one of the charges at the end of this article.]*