

AGGRAVATED MANSLAUGHTER IN THE SECOND DEGREE
(Reckless Homicide of a Police Officer or Peace Officer)
Penal Law § 125.21
(Committed on or after Dec. 21, 2005)

The (*specify*) count is Aggravated Manslaughter in the Second Degree.

Under our law, a person is guilty of Aggravated Manslaughter in the Second Degree when he or she recklessly causes the death of a police officer [*or peace officer*] where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was a police officer [*or peace officer*].

The following terms used in that definition have a special meaning:¹

A person acts RECKLESSLY with respect to a death when that person

engages in conduct which creates or contributes to a substantial and unjustifiable risk that another person's death 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.²

[NOTE: Where there is evidence of voluntary intoxication on the

¹ 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.

² See Penal Law § 15.05(3); *People v. Boutin*, 75 NY2d 692, 696 (1990).

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.^{3]}

A person REASONABLY SHOULD HAVE KNOWN that the victim was a police officer [*or peace officer*] if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would have known that such victim was a police officer [*or peace officer*].⁴

A police officer [*or peace officer*] is in the course of performing his or her OFFICIAL DUTIES when he or she is acting pursuant to his or her occupation as a police officer [*or peace officer*], rather than as a private citizen.⁵

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 (specify);
2. That the defendant did so recklessly;
3. That, at the time of the killing, (specify) was a police officer [*or peace officer*] in the course of performing his/her official duties; and

³ See Penal Law § 15.05(3).

⁴ Cf. *People v Goetz*, 68 NY2d 96 (1986).

⁵ See *People v Davis*, 43 NY2d 17 (1977); *People v. Woods*, 141 A.D.2d 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.

4. That, at the time of the killing, the defendant knew or reasonably should have known that (specify) was a police officer [or peace officer].

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.