

**AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE**  
**(Intentional Homicide**  
**Under Extreme Emotional Disturbance)<sup>1</sup>**  
**Penal Law § 125.22(2)**  
**(Committed on or after Dec. 21, 2005)**

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

Under our law, a person is guilty of Aggravated Manslaughter in the First Degree when, with intent to cause 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], he or she causes the death of such officer [*or* another police officer] [*or* another peace officer].

The following terms used in that definition have a special meaning:<sup>2</sup>

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

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<sup>1</sup>This charge should be used in those relatively rare cases where, having heard evidence of "extreme emotional disturbance," the Grand Jury finds legally sufficient evidence of an intentional killing, but votes to indict the defendant only for Aggravated Manslaughter in the First Degree, rather than for Aggravated Murder. In such cases, the affirmative defense of "extreme emotional disturbance," having been accepted by the Grand Jury, is no longer relevant at trial and need not be established by the defendant nor proven as an element of the crime by the People. See Penal Law § 125.20(2).

<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). If necessary, an expanded definition of "intent" is available in the section on Instructions of General Applicability under Culpable Mental States.

[NOTE: In a case of “transferred intent,” add the following paragraph:

Under our law, it is not required that the police officer [or peace officer] who dies be the same police officer [or peace officer] who was intended to be injured.]

A person REASONABLY SHOULD HAVE KNOWN that his or her intended 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 intended victim was a police officer [or peace officer].<sup>4</sup>

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.

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 with the intent to cause the death of (intended victim);
3. That, at the time of the killing, (intended victim) was a police officer [or peace officer] in the course of performing his/her official duties; and
4. That, at the time of the killing, the defendant knew or reasonably should have known that (intended victim) was a police officer [or peace officer].

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<sup>4</sup> Cf. *People v. Goetz*, 68 N.Y.2d 96 (1986).

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.