MURDER IN THE SECOND DEGREE
(A-1 Felony)
(Intentional Homicide in Course of Sex Offense)
PENAL LAW 125.25(5)
(Committed on or after November 1, 2004)

The ____ count is Murder in the Second Degree.

Under our law, a person is guilty of Murder in the Second Degree when, being eighteen years old or more, while in the course of committing (*specify)*[1] against a person less than fourteen years old, he or she intentionally 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: Intentionally, (*Name of specified offense*).

INTENT means conscious objective or purpose.[2] Thus, a person INTENTIONALLY causes the death of another when that person's conscious objective or purpose is to cause the death of another.

Under our law, a person commits (*specify*) when:

[*Here, cross-reference to the applicable definition in a previously explained count, or now read statutory definition of applicable offense and any defined terms and applicable charges as set forth in CJI2d for that offense.*]

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[1]The statute specifies the following offenses: "rape in the first, second or third degree, criminal sexual act in the first, second or third degree, sexual abuse in the first degree, aggravated sexual abuse in the first, second, third or fourth degree, or incest." By definition, the statute includes incest in the first, second and third degrees which were so designated effective November 1, 2006, after the enactment of PL §125.25(4).

[2] *See* Penal Law § 15.05(1).

It is not a defense to this charge that the actor did not know that the other person was less than fourteen (14) years old, or that the actor believed that such person was fourteen (14) years old or more on the date of the crime.[3]

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 three elements:

> 1. That on or about *(date)*, in the county of *(county)*, the defendant, *(defendant's name)*, while being eighteen years old or more, caused the death of *(victim's name)* who at the time was less than fourteen years old; and
>
> 2. That the defendant did so with the intent to cause the death of *(victim's name)*;
>
> 3. That the defendant did so while in the course of committing (*Specify name of crime*) against (*victim's name*); and

Therefore, if you find that the People have proven beyond a reasonable doubt all three of those elements, you must find the defendant guilty of Murder in the Second 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 Murder in the Second Degree as charged in the _____ count.

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[3] *See* Penal Law §15.20(3).