

AGGRAVATED MURDER
(A-I Felony)
PENAL LAW 125.26 (1)
(Committed on or after:
Dec. 21, 2005 for paragraphs i, ii and iii of paragraph (a),
and March 16, 2013 for paragraph ii-a)
(Revised June 2014)¹

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,² who was

Select the appropriate category:

- a police officer³
- a uniformed court officer of the unified court system
- a parole officer in the department of corrections and community supervision
- a probation officer
- an employee of the Office of Children & Family Services designated by the director to be a peace officer in the

¹ The 2014 revision was primarily to accommodate the addition of subdivision (1)(a)(ii-a). Footnotes two through six were added or revised.

² The definition of the crime has a “transferred intent” provision which at this point reads: “or of a third person who was a person described in subparagraph (i), (ii), (ii-a) or (iii) of paragraph (a) of this subdivision engaged at the time of the killing in the course of performing his or her official duties.” This charge does not include a transferred intent provision; thus, if transferred intent is in issue, this charge should be modified accordingly.

³ Subparagraph (i) of Penal Law 125.26(1)(a) list “a police officer as defined in [CPL 1.20(34)].” The relevant provision of that definition should be included here and in the elements if it is in issue whether the purported officer is included within that definition.

Subparagraph (ii) thereafter list: “a peace officer as defined in paragraph a of subdivision twenty-one, subdivision twenty-three, twenty-four or sixty-two (employees of the division for youth) of [CPL § 2.10].” The four categories of peace officers from each of those subdivisions of CPL 2.10 is listed in the text after “police officer.”

transport and warrant unit⁴

an employee of a state correctional institution ⁵,
an employee of a local correction facility

Select applicable individual: a firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse involved in a first response team, ⁶

an individual who, in the course of official duties, performs emergency response activities,

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 (specify title from the foregoing list), and the defendant was more than eighteen years old at the time of the commission of the crime.

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

⁴ The statute recites: "employee of the division for youth" [DOY]. However, on January 8, 1998, the DOY was renamed the "Office of Children & Family Services" (OCFS), and all statutory references to the DOY are deemed a reference to OCFS. Executive Law § 500(3). The reference to "peace officer" in this category is because CPL 2.10(62) states that a peace officer in OCFS is one who is "assigned to transport and warrants units who are specifically designated by the director in accordance with section five hundred four-b of the executive law." That Executive Law section in relevant part states: "Employees of such [transport and warrant] unit who are specifically designated by the director in writing, shall have the power and authority of peace officers in respect thereto."

⁵ Subparagraph (iii) lists "an employee of a state correctional institution or...employee of "a local correctional facility as defined in [Correction Law § 40(2)]." That Correction Law statute states that a: "'Local correctional facility' means any county jail, county penitentiary, county lockup, city jail, police station jail, town or village jail or lockup, court detention pen or hospital prison ward."

⁶ Subparagraph (ii-a) lists those included in this and the following portion of this charge.

following terms⁷: "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.⁸

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*).⁹

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.¹⁰

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

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);

⁷ If causation, "death," or "person" is in issue, see Additional Charges at the end of this article.

⁸ 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.

⁹ Cf., *People v. Goetz*, 68 NY2d 96 (1986).

¹⁰ 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.

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 in the "Additional Charges" section of Penal Law article 125 charges.