

MURDER IN THE FIRST DEGREE
(Intentional Murder In Course and Furtherance of
Commission of or Immediate Flight
from Designated Crime;
Person Who Commands Killer)¹
Penal Law § 125.27(1)(a)(vii)
(Committed on or after Sept. 1, 1995)
(Revised Oct. 25, 2001)

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

Under our law, a defendant is guilty of Murder in the First Degree when, with intent to cause the death of another person, the defendant causes the death of such person [*or* of a third person]² and the victim was killed while the defendant was in the course of committing [*or* attempting to commit] and in furtherance of (name of designated crime),³ [*or* in the course of and furtherance of immediate flight after committing (*or* attempting to commit) (name of designated crime)], provided that the victim was not a participant in the (name of designated crime), and provided further that the defendant caused the death of the victim by commanding another person to cause the death of the victim [*or* intended victim], and the defendant was more than eighteen (18) years old at the time of the commission of the crime.

¹ When both murder in the second degree and Murder in the first degree are charged for killing In course and furtherance of designated felony see Additional Charge at the end of this article.

² If transferred intent applies and is in issue, see Additional Charges at the end of this article.

³ Penal Law § 125.27(1)(a)(vii) lists the following designated crimes: robbery, burglary in the first or second degree, kidnapping in the first degree, arson in the first or second degree, rape in the first degree, sodomy in the first degree, sexual abuse in the first degree, aggravated sexual abuse in the first degree, and escape in the first degree. This charge is not applicable to killings committed during a flight from attempted murder; for that situation, there is a separate charge.

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

INTENT means conscious objective or purpose. Thus, a person intends to cause the death of another person when his or her conscious objective or purpose is to cause the death of that person.⁴

COMMAND means to direct authoritatively.⁵

Here, name and define the designated crime.

[In determining whether a person is in IMMEDIATE FLIGHT from the commission (or attempted commission) of (name of designated crime), you may consider: (1) the distance, if any, between the location of the (name of designated crime) and the location where death was caused; (2) the interval of time, if any, between the commission (or attempted commission) of the (name of designated crime) and the causing of the death; (3) whether (police, security personnel, citizens) were in close pursuit at the time the death was caused; (4) whether such person possessed fruits of the (name of designated crime) at the time the death was caused; and (5) whether such person(s) had reached a place of temporary safety before the death was caused.]⁶

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:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused the death of

⁴ See Penal Law § 15.05(1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

⁵ People v. Couser, 94 N.Y.2d 631 (2000).

⁶ See, *People v Gladman*, 41 N.Y.2d 123, 129 (1976). The factors which are inapplicable to the case should be omitted in the charge to the jury.

(actual victim);

2. That the defendant did so by commanding another person to cause the death of (intended victim);
3. That the defendant did so with the intent to cause the death of (intended victim);
4. That (actual victim) was killed while the defendant was in the course of committing [or attempting to commit] and in furtherance of (name of designated crime) [or in the course of and furtherance of immediate flight after committing (or attempting to commit) (name of designated crime)] and that (victim) was not a participant in the (name of designated crime); and
5. That the defendant was more than eighteen (18) years old at the time of the commission of the crime.

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.

[NOTE: If either of the affirmative defenses -- Extreme Emotional Disturbance (§ 125.27(2)(a)) or Aiding a Suicide (§ 125.27(2)(b)) -- applies, omit the final two paragraphs of the above charge, and substitute one of the charges at the end of this article.]