

**MURDER FIRST DEGREE**  
**(Capital)**  
**(Intentional Murder of**  
**Correctional Employee)**  
**PENAL LAW 125.27(1)(a)(iii)**  
**(Committed on or after Sept. 1, 1995)**

The \_\_\_\_\_ 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 other person [*or* of a third person]<sup>1</sup>, and the intended victim was an employee of a state correctional institution [*or* a local correctional facility] 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 intended victim was an employee of a state correctional institution [*or* local correctional facility], and the defendant was more than eighteen (18) 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 following terms: "intent," "knew," "reasonably should have known," ["local correctional facility,"] 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.<sup>2</sup>

A person **KNOWS** that his or her intended victim is an

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<sup>1</sup>If transferred intent applies and is in issue, see the definition of transferred intent in the Additional Charges at the end of this article.

<sup>2</sup>See Penal Law § 15.05(1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

employee of a state correctional institution [*or* a local correctional facility] if he or she is aware that such intended victim is an employee of a state correctional institution [*or* a local correctional facility].<sup>3</sup>

A person REASONABLY SHOULD KNOW that his or her intended victim is an employee of a state correctional institution [*or* a local correctional facility] if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would know that such intended victim is an employee of a state correctional institution [*or* a local correctional facility].<sup>4</sup>

An employee of a state correctional institution [*or* a local correctional facility] 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 an employee of a state correctional institution [*or* a local correctional facility], rather than as a private citizen.<sup>5</sup>

[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.]<sup>6</sup>

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 elements:

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<sup>3</sup>See Penal Law § 15.05(2).

<sup>4</sup>*Cf. People v. Goetz*, 68 NY2d 96 (1986).

<sup>5</sup>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.

<sup>6</sup>See Correction Law § 40(2).

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused the death of (actual victim);
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 an employee of a state correctional institution [or local correctional facility] 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 (intended victim) was an employee of a state correctional institution [or local correctional facility]; 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 Murder in the First 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 the crime of Murder in the First Degree as charged in the \_\_\_\_\_ count.

*[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.]*