

MURDER FIRST DEGREE
(Capital)
(Intentional Murder While Escaped
From Life Sentence)
PENAL LAW 125.27(1)(a)(iv)
(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] and at the time of the commission of the killing the defendant had escaped from confinement in a state correctional institution [*or* from custody] upon a sentence

[*NOTE: Select appropriate alternative:*
for the term of his or her natural life

or commuted to one of natural life

or for an indeterminate term the minimum of which was at least fifteen (15) years and the maximum of which was natural life]

and had not yet been returned to such confinement [*or* custody], and the defendant was more than eighteen (18) years old at the time of the commission of the crime.

The term "intent" used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

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.¹

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

Under our law, it is not required that the person who dies be the same person whose death was intended to be caused.]

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 (specify);
3. That, at the time of the commission of the killing, the defendant had escaped from confinement in a state correctional institution [or from custody] upon a sentence

*[NOTE: Select appropriate provision:
for the term of his/her natural life*

or commuted to one of natural life

or for an indeterminate term the minimum of which was at least fifteen (15) years and the maximum of which was natural life]

and had not yet been returned to such confinement [or custody]; and

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

4. 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.]