

**MURDER FIRST DEGREE
(Capital)
(Intentional Murder -
Prior Murder Conviction)¹
PENAL LAW 125.27(1)(a)(ix)
(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 the intent to cause the death of another person, the defendant causes the death of such person [or of a third person], 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.

¹Pursuant to an amendment of CPL 200.60(3)(b) applicable solely to this crime, unless the defendant admits the prior conviction, the guilt phase of the trial for this crime must be conducted in two separate segments. This charge addresses only the first segment of the guilt phase trial.

The element which elevates this crime to a capital felony is that:

"prior to committing the killing, the defendant had been convicted of murder as defined in this section 125.27 or section 125.25 of this article, or had been convicted in another jurisdiction of an offense which, if committed in this state, would constitute a violation of either of such sections."

Pursuant to CPL § 200.60(3)(b), the fact of such prior conviction must be charged in a special information. The defendant must be arraigned on the special information in accordance with the procedure set forth in that statute. If, upon such arraignment, the defendant admits this element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense.

Unlike the operation of CPL 200.60(3) as to any other crime, if the defendant denies the prior conviction element of this crime or remains mute, the People may prove this element "only after the jury has first found the defendant guilty of intentionally causing the death of a person as charged in the indictment."

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.²

[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.]

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), caused the death of (specify);
2. That the defendant did so with the intent to cause the death of (specify); and
3. That the defendant was more than eighteen (18) years old at the time of the commission of the crime.³

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

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

³Regardless of whether the defendant has admitted, denied, or stood mute regarding his prior conviction, at the first segment of the guilt phase trial, the offense will consist of *only* the first three elements. No mention may be made of the prior conviction. (See, CPL 200.60[3][b]).

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.]