

AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE
PENAL LAW 125.11
(Committed on or after Dec. 21, 2005)
Revised April 2018¹

The (*specify*) count is Aggravated Criminally Negligent Homicide.

Under our law, a person is guilty of Aggravated Criminally Negligent Homicide when, with criminal negligence, he or she causes the death of a police officer [*or peace officer*] where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was a police officer [*or peace officer*].

The following terms used in that definition have a special meaning:²

A person acts with CRIMINAL NEGLIGENCE with respect to a death when

that person engages in conduct which creates or contributes to a substantial and unjustifiable risk that another person's death will occur,

and when he or she fails to perceive that risk,

and when that risk is of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in

¹ The 2018 revision was to move the opening paragraph of the definition of "criminal negligence" to the end of the definition and otherwise conform it to the same paragraph in the charge for "criminally negligent homicide" (Penal Law § 125.10).

² If causation or "death" is in issue, see Additional Charges at the end of this article. Additionally, if the status of the deceased as a police or peace officer is at issue, refer to the definitions of "police officer" set forth in CPL § 1.20(34) and of "peace officer" set forth in CPL § 2.10.

the situation.³

You may notice from that definition that CRIMINAL NEGLIGENCE is not the same type of negligence you may be familiar with from a civil lawsuit seeking a money judgment. The carelessness required for criminal negligence is appreciably more serious; it must be such that its seriousness would be apparent to anyone who shares the community's general sense of right and wrong.

A person REASONABLY SHOULD HAVE KNOWN that the victim was a police officer [*or peace officer*] if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge would have known that the victim was a police officer [*or peace officer*].⁴

A police officer [*or peace officer*] 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 police officer [*or peace officer*], rather than as a private citizen.⁵

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 criminal negligence;

³ See Penal Law § 15.05(4); *People v. Boutin*, 75 N.Y.2d 692 (1990).

⁴ Cf. *People v. Goetz*, 68 N.Y.2d 96 (1986).

⁵ See *People v. Davis*, 43 N.Y.2d 17 (1977); *People v. Woods*, 141 A.D.2d 684 (2nd Dept. 1988); *People v. Lanzot*, 67 A.D.2d 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 incident, (specify) was a police officer [*or* peace officer] in the course of performing his/her official duties; and
4. That, at the time of the incident, the defendant knew or reasonably should have known that (*specify*) was a police officer [*or* peace officer].

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.