

**AGGRAVATED MURDER**  
**Penal Law § 125.26 (1)(a) (i) , (ii) and (iii)**  
**(Committed on or after Dec. 21, 2005**

**(Revised Dec. 2018)<sup>1</sup>**

The (*specify*) count is Aggravated Murder.

Under our law, a defendant is guilty of Aggravated Murder when, with intent to cause the death of another person, he or she causes the death of such person,<sup>2</sup> who was

*Select the appropriate category:*

a police officer<sup>3</sup>

a uniformed court officer of the unified court system

a parole officer in the department of corrections and

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<sup>1</sup>The 2018 revision was for the purpose of removing the provisions applicable to subdivision (1) (a) (ii-a), which had been added in June 2014, and placing them in a separate charge.

<sup>2</sup> The definition of the crime has a “transferred intent” provision which at this point reads: “or of a third person who was a person described in subparagraph (i), (ii), (ii-a) or (iii) of paragraph (a) of this subdivision engaged at the time of the killing in the course of performing his or her official duties.” This charge does not include a transferred intent provision; thus, if transferred intent is in issue, this charge should be modified accordingly.

<sup>3</sup> Subparagraph (i) of Penal Law 125.26(1)(a) list: “a police officer as defined in [CPL 1.20(34)].” The relevant provision of that definition should be included here and in the elements if it is in issue whether the purported officer is included within that definition.

Subparagraph (ii) thereafter list: “a peace officer as defined in paragraph a of subdivision twenty-one, subdivision twenty-three, twenty-four or sixty-two (employees of the division for youth) of [CPL § 2.10].” The four categories of peace officers from each of those subdivisions of CPL 2.10 is listed in the text after “police officer.”

community supervision <sup>4</sup>

a probation officer

an employee of the Office of Children & Family Services designated by the director to be a peace officer in the transport and warrant unit<sup>5</sup>

an employee of a state correctional institution,<sup>6</sup>  
an employee of a local correction 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 victim was (specify title from the foregoing list), and the defendant was more than

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<sup>4</sup> This portion of Penal Law 125.26(1)(a)(ii) reads, "the intended victim was a peace officer as defined in . . . subdivision twenty-three . . . of section 2.10 of the Criminal Procedure Law." That subdivision reads, "Parole officers or warrant officers in the division of parole." However, the latter portion of Penal Law 125.26(1)(a)(ii) reads "that the defendant knew or reasonably should have known that the intended victim was such a . . . parole officer." Thus, it does not specifically refer to warrant officers. See Donnino, Practice Commentary to McKinney's Penal Law Section 125.27.

<sup>5</sup> The statute recites: "employee of the division for youth." However, on January 8, 1998, the Division for Youth was renamed the "Office of Children & Family Services" (OCFS), and all statutory references to the Division for Youth are deemed a reference to OCFS. Executive Law § 500(3). The reference to "peace officer" in this category is because CPL 2.10(62) states that a peace officer in OCFS is one who is "assigned to transport and warrants units who are specifically designated by the director in accordance with section five hundred four-b of the executive law."

That Executive Law section in relevant part states: "Employees of such [transport and warrant] unit who are specifically designated by the director in writing, shall have the power and authority of peace officers in respect thereto."

<sup>6</sup> Subparagraph (iii) lists "an employee of a state correctional institution or...employee of "a local correctional facility as defined in [Correction Law § 40(2)]." That Correction Law statute states that 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."

eighteen years old at the time of the commission of the crime.<sup>7</sup>

The following terms used in that definition have a special meaning:<sup>8</sup>

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>9</sup>

A person REASONABLY SHOULD KNOW that a person is a (*specify*) if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would know that such person is a (*specify*).<sup>10</sup>

A (*specify*) 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 (*specify*), rather than as a private citizen.<sup>11</sup>

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<sup>7</sup> In setting forth the element that “the defendant knew or reasonably should have known” the victim’s status, the statute repeats the reference to a firefighter, emergency medical technician, ambulance driver, paramedic, physician, or registered nurse, but not the reference to an “individual who, in the course of official duties, performs emergency response activities.” In cases where the victim is alleged to have been an individual who, in the course of official duties, performs emergency response activities and was engaged in such activities at the time of killing, the trial court must determine whether the “knows or reasonably should have known” element is implied in the statute and should thus be charged.

<sup>8</sup> If causation, “death,” or “person” is in issue, see Additional Charges at the end of this article.

<sup>9</sup> See Penal Law § 15.05(1). If necessary, an expanded definition of “intent” is available in the section on Instructions of General Applicability under Culpable Mental States.

<sup>10</sup> Cf., *People v. Goetz*, 68 NY2d 96 (1986).

<sup>11</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.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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 (victim);
2. That the defendant did so with the intent to cause the death of (victim);
3. That, at the time of the killing, (victim) was a (specify) 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 (victim) was a (specify); 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 (§ 125.26(2)(a)) or Aiding a Suicide (§ 125.26(2)(b)) -- applies, omit the final two paragraphs of the above charge, and substitute one of the charges in the "Additional Charges" section of Penal Law article 125 charges.*