

AGGRAVATED MURDER
(Intentional Murder of Certain First Responders)
Penal Law § 125.26 (1)(a)(ii-a)
(Committed on or after March 16, 2013)

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 other person [*or of a third person*]¹, and the intended victim was a

Select as appropriate:

firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse involved in a first response team, or

any [other] individual who, in the course of official duties, performs emergency response activities

and was engaged in such activities at the time of killing and

the defendant knew or reasonably should have known that the intended victim was such (*specify from foregoing list*)², and

the defendant was more than eighteen (18) years old at the time of the commission of the crime.

¹ If transferred intent applies and is in issue, see the definition of transferred intent in the “Additional Charges” section of the instructions for article 125.

² 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.

The following terms used in that definition have a special meaning:³

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.⁴

A person REASONABLY SHOULD KNOW that his or her intended victim is [specify the victim's status]⁵ if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would know that such intended victim is [specify the victim's status].⁶

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 elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), caused the death of (name of victim);
2. That the defendant did so with the intent to cause the death of (intended victim);
3. Select as appropriate:
That, at the time of the killing, (intended victim) was (specify the intended victim's status) involved in a first response team and was engaged in such activities'

³ If causation, "death," or "person" is in issue, see the "Additional Charges" section of the instructions for article 125.

⁴ See Penal Law § 15.05 (1). For an expanded charge on intent, see Instructions of General Applicability, Culpable Mental States, Intent.

⁵ See footnote 2.

⁶ Cf. *People v Goetz*, 68 NY2d 96 (1986).

Or,

That, at that time of the killing, (intended victim) was an individual who, in the course of his/her official duties performs emergency response activities, and was engaged in such activities;

4. That, at the time of the killing, the defendant knew or reasonably should have known that (intended victim) was (specify the victim's status),⁷ 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 (§ 125.27 [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 from the "Additional Charges" section of the instructions for article 125.]

⁷ See footnote 2.