

MURDER IN THE FIRST DEGREE
(Intentional Murder of Peace Officer)
Penal Law § 125.27(1)(a)(ii)
(Committed on or after Sept. 1, 1995)

The (*specify*) 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 person [or ~~of a third person~~],¹ and the intended victim was

[*NOTE: Select appropriate alternative:*

a uniformed officer of the unified court system

or a parole officer²

or a probation officer

or an employee of the ~~division for youth~~ office of children and

¹ If transferred intent applies and is in issue, see the definition of transferred intent in the Additional Charges at the end of this article.

² This portion of Penal Law 125.27(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 125.27(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.

family services assigned to a transport and or warrant unit].³

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 intended victim was such a uniformed court officer [or parole officer] [or probation officer] [or employee of the division for youth], and the defendant was more than eighteen (18) years old at the time of the commission of the crime.

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

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 KNOWS that his or her intended victim is a (specify type of peace officer) if he or she is aware that such intended victim is a (specify type of peace officer).⁵

³ The statute refer to the “division of youth.” But, effective January 8, 1998, the name was changed to “office of children and family services.” Executive Law § 500(3) (“Whenever the division for youth or its director is referred to in any provision of this chapter or in any other law, such reference shall be deemed to refer to the office of children and family services or the commissioner of children and family services”). The name was changed in this charged in 2018 and the phrase “transport (or warrant) unit” was amended to read “transport and warrant unit” to accord with this statute’s cross-reference to CPL 1.20(62).

³ See Penal Law § 15.05(1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

⁴ See Penal Law § 15.05(2).

A person REASONABLY SHOULD KNOW that his or her intended victim is a (specify type of peace officer) if, in the same circumstances, a reasonable person in the same position and possessing the same knowledge, would know that such intended victim is a (specify type of peace officer).⁶

A (specify type of 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 (specify type of peace officer), rather than as a private citizen.⁷

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 five elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused the death of (actual victim);
2. That the defendant did so with the intent to cause the death of (intended victim);
3. That, at the time of the killing, (intended victim) was a (specify type of peace officer) who was 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 (intended victim) was such a (specify type of peace officer); and

⁵ Cf. *People v. Goetz*, 68 NY2d 96 (1986).

⁶ 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.

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 at the end of this article.]