

MURDER FIRST DEGREE
(Capital)
(Intentional Murder of Witness
To Exact Retribution
for Witness's Testimony)
PENAL LAW 125.27(1)(a)(v)
(Committed on or after Sept. 1, 1995)
(Revised¹)

The _____ 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]², and the intended victim had previously testified in a criminal action or proceeding and the killing was committed for the purpose of exacting retribution for such prior testimony, and the defendant was more than eighteen (18) years old at the time of the commission of the crime.

The definition of the crime requires that the defendant cause the death for the purpose of exacting retribution for the intended victim's prior testimony. It is not required that the death be caused only for that purpose. What is required is that the motivation to exact retribution was a substantial reason for the murder.³

Some of the terms used in the definition of the crime have

¹ This charge was revised twice. The last revision was effective May 20, 2004. That revision added the third paragraph to incorporate the law set down by *People v. Cahill*, 2 N.Y.3d 14 (2003). The previous revision had taken effect on October 25, 2001.

² If transferred intent applies and is in issue, see the definition of transferred intent in the Additional Charges at the end of this article.

³ *People v. Cahill*, 2 N.Y.2d 14 (2003).

their own special meaning in our law. I will now give you the meaning of the following terms: "intent" and "criminal action or proceeding."

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 CRIMINAL ACTION OR PROCEEDING is any proceeding which involves a criminal investigation, or which constitutes part of a criminal prosecution, or which occurs in a criminal court and is related to any prospective, pending, or completed criminal prosecution.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 five 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);
3. That (specify) had previously testified in a criminal action or proceeding;
4. That the killing was committed for the purpose of exacting retribution for such prior testimony; and

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

⁵ This charge integrates CPL § 1.20(16) & (18). See CPL § 1.20(16) for the definition of "criminal action" and CPL § 1.20(18) for the definition of "criminal proceeding."

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

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 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.]