

**MURDER FIRST DEGREE**  
**(Capital)**  
**(Intentional Murder In Course and Furtherance of**  
**Immediate Flight from**  
**Attempted Murder;**  
**Person Who Commands Killer)**  
**PENAL LAW 125.27(1)(a)(vii)**  
**(Committed on or after Sept. 1, 1995)**  
**(Revised Oct. 25, 2001)**

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]<sup>1</sup> while the defendant was in the course of and furtherance of immediate flight after attempting to commit murder in the second degree, provided that the victim was not a participant in the attempted murder, and provided further that the defendant caused the death of the victim by commanding another person to cause the death of the victim [*or* intended victim], and the defendant was more than eighteen (18) years old at the time of the commission of the crime.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent," "attempted murder," "command" and "immediate flight."

INTENT means conscious objective or purpose. Thus, a person intends to cause the death of another person when his or her conscious objective or purpose is to cause the death of that

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

person.<sup>2</sup>

*(Add charge on attempted murder)*

COMMAND means to direct authoritatively.<sup>3</sup>

In determining whether a person is in IMMEDIATE FLIGHT from the attempted commission of murder you may consider: (1) the distance, if any, between the location of the attempted murder and the location where death was caused; (2) the interval of time, if any, between the attempted commission of the murder and the causing of the death; (3) whether [police, security personnel, citizens] were in close pursuit at the time the death was caused; and (4) whether such person had reached a place of temporary safety before the death was caused.<sup>4</sup>

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 by commanding another person to cause the death of (intended victim);
3. That the defendant did so with the intent to cause the death of (intended victim);

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<sup>2</sup>See Penal Law § 15.05(1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

<sup>3</sup> *People v. Couser*, N.Y.2d (199)

<sup>4</sup>Adapted from *People v Gladman*, 41 N.Y.2d 123, 129 (1976). The factor of whether the defendant possessed fruits of the crime has been omitted; any other factors which are inapplicable to the case should be omitted in the charge to the jury.

4. That (actual victim) was killed while the defendant was in the course of and furtherance of immediate flight after attempting to commit the crime of murder and that (victim) was not a participant in the attempted murder; and
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.]*