

ASSISTING SUICIDE
[Penal Law § 125.25(1)(b),
Penal Law § 125.27(2)(b)]

If applicable, omit the final two paragraphs of the instructions on the crime charged, and substitute the following:

If you find that the People have not proven beyond a reasonable doubt any one of those elements, you must find the defendant not guilty of Murder in the _____ degree.

If you find that the People have proven beyond a reasonable doubt (both / each) of the elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of (*specify*), you will not consider the affirmative defense.

Under our law, it is an affirmative defense to a charge of Murder in the _____ degree that the defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide.

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to

outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable doubt the elements of (*specify*), you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of (*specify*).]

[A finding that the defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide and is accordingly not guilty of (*specify*), does not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or any other crime.]