

AGGRAVATED FAMILY OFFENSE
Penal Law § 240.75
(Committed on or after January 23, 2013)

A person is guilty of aggravated family offense when he or she commits a misdemeanor¹ defined as a specified offense [and he or she has been convicted of one or more specified offenses within the immediately preceding five years],² and when the defendant and the person against whom [the/each] offense was committed were members of the same family or household.³

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

A SPECIFIED OFFENSE is (specify the offense[s]).

Note: Here, if the “one or more specified offense(s)” is a separately charged offense, the court may incorporate by reference its instruction to the jury on that offense; otherwise, the court must instruct the jury on the “specified offense.”

MEMBERS OF THE SAME FAMILY OR HOUSEHOLD are:

¹ At this point the statutory definition adds “in subdivision two of this section.”

² CPL § 200.63 requires that an “indictment or information for such offense shall be accompanied by a special information, filed by the district attorney with the court, alleging (1) that the defendant was previously convicted of a specified offense as defined [Penal Law § 240.75], (2) that at the time of the previous offense the defendant and the person against whom the offense was committed were members of the same family or household as defined in CPL § 530.11(1) unless the defendant was previously convicted of “aggravated family offense” because proof of that element was required for that conviction, and (3) that such previous conviction took place within the time period specified [Penal Law § 240.75(1)].” If the defendant admits the allegations in the special information, they are deemed established and the court is required to submit the case to the jury “as if such admitted allegation or allegations were not elements of the offense.” If the defendant denies an allegation or allegations in the special information, the People may prove same at the trial.

³ At this point the statutory definition adds “as defined in subdivision one of section 530.11 of the criminal procedure law.” Per *People v Saenger*, 39 N.Y.3d 433 (2023), the indictment must specify the misdemeanor; otherwise, the indictment is jurisdictionally defective.

Select appropriate alternative(s):

persons related by consanguinity or affinity ⁴;

persons legally married to one another;

persons formerly married to one another regardless of whether they still reside in the same household;

persons who have a child in common, regardless of whether such persons have been married or have lived together at any time;

persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

Factors [you] may consider in determining whether a relationship is an "intimate relationship" include but are not limited to:

the nature or type of relationship, regardless of whether the relationship is sexual in nature;

the frequency of interaction between the persons; and the duration of the relationship.

⁴ There is no statutory definition of "consanguinity" or "affinity." A dictionary definition of "consanguinity" is "relationship by descent from a common ancestor." Random House Webster's Unabridged Dictionary (1999). That dictionary's definition of "affinity" is "relationship by marriage or by ties other than those of blood (distinguished from consanguinity)."

Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship."⁵

*Add if the defendant has denied that a prior conviction was committed within the requisite time period.*⁶

The People alleged that the defendant had been convicted of the "specified offense" (*specify*) within the immediately preceding five years of the alleged commission of the present specified offense. In calculating the five year period, any period of time during which the defendant was incarcerated for any reason between the time of the commission of any of such previous offenses and the time of commission of the present crime shall be excluded and such five year period shall be extended by a period or periods equal to the time served under such incarceration.

Add if the relationships of the present and previous parties are in issue:

The defendant and the person against whom the prior offense was [allegedly] committed must have been members of the same family or household. Likewise, the defendant and the person against whom the current offense was allegedly committed must have been members of the same family or household. However, the person against whom the current specified offense was allegedly committed may be different from the person against whom the previous offense was committed and such

⁵ CPL § 530.11. See the same definition in Family Court Act § 812(1) and cases interpreting that definition, particularly the meaning of "intimate relationship." See e.g, *Jose M. v Angel V.*, 99 AD3d 243 (2d Dept 2012) and the cases cited therein).

⁶ As detailed in footnote two, the defendant may admit the prior conviction and that it was committed within the requisite time period. Alternatively, the defendant may admit the prior conviction but deny it was committed within the requisite time period. In the latter case, the People may prove the requisite time period. That, however, can only be done in the context of the defendant having a prior conviction.

persons do not need to be members of the same family or household.

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 (two / three) elements:

1. That on or about (date) , in the county of (county) , the defendant, (defendant's name), committed the specified offense of (specify); [and]

[2. That the defendant had been convicted of the “specified offense” of (specify) within the immediately preceding five years; and]

[2. / 3.] That the defendant and the person against whom [the/each] offense was committed were members of the same family or household.

If you find the People have proven beyond a reasonable doubt (each / both) of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt (either one / any one) or more of those elements, you must find the defendant not guilty of this crime.