

HATE CRIMES¹
PENAL LAW 485.05
(Committed on or after October 8, 2000)

The _____ count is (name “specified offense”), as a Hate Crime.²

Under our law, a person is guilty of (name “specified offense”), as a Hate Crime, when that person commits (name “specified offense”), and:

Select appropriate alternative:

intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or a perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age of sixty years old or more³, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

or

intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age of sixty years old or more⁴, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

¹ To determine the classification of the offense, see Penal Law § 485.10.

² CPL 200.50 (4) and (7) (c).

³ See Penal Law § 485.05 (4) (a).

⁴ See Penal Law § 485.05 (4) (a).

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: (name “specified offense”), “intentionally” [and “disability”].

Under our law, a person commits the offense of (name “specified offense”), when:

[NOTE: If the specified offense has been separately charged, the jury should be instructed on that count first and that instruction need only be cross-reference here. If it has not been separately charged, then here read the statutory definition of the applicable offense and any defined terms as set forth in CJI2d for that offense.⁵]

INTENT means conscious objective or purpose. Thus, a person INTENTIONALLY

Select appropriate alternative

selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or a perception regarding (specify appropriate attribute[s]) when that person’s conscious objective or purpose is to do so.⁶

or

commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception

⁵ If the specified offense is separately charged to the jury, the jury will need to be instructed to consider the specified offense in the alternative to the hate crime; otherwise a repugnant verdict may ensue, as it did in *People v Delee*, 24 NY3d 603 (2014), where the jury convicted the defendant of first degree manslaughter as a hate crime and acquitted him of first degree manslaughter.

⁶ See Penal Law § 15.05 (1).

regarding (specify appropriate attribute[s]) when that person's conscious objective or purpose is to do so.

In this regard, proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden of proof.⁷

["DISABILITY" means a physical or mental impairment that substantially limits a major life activity.⁸]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

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

Select appropriate second element:

2. That the defendant selected the person against whom the offense was committed [or intended to be committed] in whole or in substantial part because of a belief or perception regarding the (specify appropriate attribute[s]) of a person, regardless of whether the belief or perception is correct; and

or

2. That the defendant committed the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the (specify

⁷ Penal Law § 485.05 (2).

⁸ See Penal Law § 485.05 (4) (b).

appropriate attribute[s]) of a person, regardless of whether the belief or perception is correct; and

3. That the defendant did so intentionally.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of _____, as a Hate Crime, 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 _____, as a Hate Crime, as charged in the _____ count.