

**Domestic Act of Terrorism Motivated by Hate  
in the Second Degree  
Penal Law § 490.27  
Committed on or after Nov. 1, 2020**

The (*specify*) count is Domestic Act of Terrorism Motivated by Hate in the Second Degree.

Under our law, a person is guilty of the crime of Domestic Act of Terrorism Motivated by Hate in the Second Degree when, acting with the intent to cause the death of, or serious physical injury to, five or more other persons,

in whole or in substantial part because of the perceived race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age of sixty years old or more,<sup>1</sup> disability, or sexual orientation of such other persons, regardless of whether that belief or perception is correct,<sup>2</sup>

he or she, as part of the same criminal transaction,

attempts to cause the death of, or serious physical injury to, such five or more persons, provided that the victims are not participants in the criminal transaction.

The following terms used in that definition have a special meaning:<sup>3</sup>

INTENT means conscious objective or purpose.<sup>4</sup> Thus, a person acts with intent to cause the death of, or serious physical

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<sup>1</sup>“Age” is defined in Penal Law § 485.05(4)(a) as meaning “sixty years old or more.” See footnote 3.

<sup>2</sup>The court need not recite the attributes and related definitions that are not in issue in the case.

<sup>3</sup>Given the relationship between “hate crimes” [Penal Law § 485.05] and this crime [see Legislative Findings Penal Law § 485.00 as amended by the same legislation that added this crime], it appears reasonable to utilize the definitions of “age,” “disability,” and “gender identity or expression” set forth in Penal Law § 485.00. Cf. *People v. Montilla*, 10 N.Y.3d 663, 668 (2008).

<sup>4</sup> See Penal Law § 15.05(1).

injury to, five or more other persons when his or her conscious objective or purpose is to do so.

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.<sup>5</sup>

[*ADD as may be necessary and appropriate:*

CRIMINAL TRANSACTION means conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.]<sup>6</sup>

If applicable, select appropriate definition(s)

DISABILITY means a physical or mental impairment that substantially limits a major life activity.<sup>7</sup>

GENDER IDENTITY OR EXPRESSION means a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.<sup>8</sup>

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<sup>5</sup> Penal Law § 10.00(10).

<sup>6</sup> The term "criminal transaction" is not specially defined for Penal Law article 490 crimes nor is there an incorporation by reference in the definition of the crime to the definition of "criminal transaction" in CPL 40.10(2). The Court of Appeals has, however, characterized the term as a "term of art" and applied the definition in CPL 40.10(2) to a statutory crime that also did not incorporate the term by reference. *People v Duggins*, 3 NY3d 522, 524 (2004) ("we conclude that the statutory term of art "criminal transaction" in Penal Law § 125.27 (1) (a) (viii) should be construed as incorporating the technical definition given the phrase in CPL 40.20(2)).

<sup>7</sup> Cf. Penal Law § 485.05(4)(b).

<sup>8</sup> Cf. Penal Law § 485.05(4)(c).

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 elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name)<sup>9</sup> as part of the same criminal transaction, attempted to cause [the death of or] serious physical injury to five or more other persons who were not participants in the criminal transaction;
2. That the defendant did so with the intent to cause [the death of, or] serious physical injury to, five or more other persons in whole or in substantial part because of the perceived (specify applicable attribute) of such other persons, regardless of whether that belief or perception was correct.

If you find the People have proven beyond a reasonable doubt 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 or both of those elements, you must find the defendant not guilty of this crime.

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<sup>9</sup> When the defendant is charged in whole or in part as an accomplice, add: "personally, or by acting in concert with another person." See Accomplice charge.