

**Domestic Act of Terrorism Motivated by Hate
in the First Degree
Penal Law § 490.28
Committed on or after Nov. 1, 2020**

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

Under our law, a person is guilty of the crime of Domestic Act of Terrorism Motivated by Hate in the First 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, disability, or sexual orientation of such other person or persons, regardless of whether that belief or perception is correct,

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

1. causes the death of at least one other person, provided that the victim or victims are not a participant in the criminal transaction; and
2. causes or attempts to cause the death of four or more additional other persons, provided that the victims are not a participant in the criminal transaction; and
3. the defendant was more than eighteen years old at the time of the commission of the crime.

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

INTENT means conscious objective or purpose.¹ Thus, a person acts with intent to cause the death of, or serious physical injury to five or more other persons when his or her conscious objective or purpose is to do so.

[DEATH is defined as irreversible cessation of heartbeat and respiration, or when these functions are maintained solely by extraordinary mechanical means, an irreversible cessation of all functions of the entire brain, including the brain stem.²]

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.³

[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

¹ See Penal Law § 15.05(1).

² *People v. Eulo*, 63 NY2d 341, 357-59 (1984).

³ See Penal Law § 10.00(10).

constitute elements or integral parts of a single criminal venture.]⁴

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 three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name)⁵, as part of the same criminal transaction:

caused the death of at least one person and the victim or victims were not participants in the criminal transaction, and

caused or attempted to cause the death of four or more additional persons and the victims 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 status: race, color, national origin, ancestry, gender, gender identify or expression, religion, religious practice,

⁴ 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)).

⁵ 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.

age, disability, or sexual orientation) of such person or persons, regardless of whether that belief or perception was correct; and

3. That the defendant was more than eighteen years old at the time of the criminal transaction.

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

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