

MURDER IN THE FIRST DEGREE
(Intentional Murder Accompanied by Torture)
Penal Law § 125.27(1)(a)(x)
(Committed on or after Sept. 1, 1995)

Revised Aug. 2018 & May 2024¹

The (specify) count is Murder in the First Degree.

Under our law, a defendant is guilty of Murder in the First Degree when, with intent to cause the death of another person, the defendant causes the death of such person [or of a third person]², and the defendant acted in an especially cruel and wanton³ manner pursuant to a course of conduct intended to inflict and inflicting torture upon the victim prior to the victim's death, and the defendant was more than eighteen (18) 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. Thus, a person acts with intent to cause the death of another person when his or her conscious objective or purpose is to cause the death of

¹ The August 2018 revision was for the purpose of deleting a dictionary definition of "cruel" and "wanton" for reasons set forth in footnote (3).

The May 2024 revision was for the purpose of adding definitions derived from the Court of Appeals cases cited in footnotes (8) and (10).

² If transferred intent applies and is in issue, see Additional Charges at the end of this article.

³ There is no statutory or decisional definition of "cruel" and "wanton." Both terms should be in the ordinary ken of a juror, especially in the context of a required element of "torture," which is defined. Whether a dictionary definition of either term should be charged is a decision left to the sound discretion of the trial judge.

that person.⁴

TORTURE means the intentional and depraved infliction of extreme physical pain.⁵ A person's infliction of extreme physical pain upon another person is INTENTIONAL when it is his or her conscious objective or purpose to inflict extreme physical pain upon that person.⁶

DEPRAVED means that the defendant relished the infliction of extreme physical pain upon the victim, evidencing debasement or perversion or that the defendant evidenced a sense of pleasure in the infliction of extreme physical pain.⁷

[PLEASURE is defined as "an agreeable sensation," "mental gratification," or "something that one desires or chooses."⁸ RELISH is defined as "a strong liking," or "enjoyment of or delight in something that satisfies one's tastes, inclinations, or desires."⁹]

A person's infliction of extreme physical pain upon another is depraved when the person relishes inflicting the pain on another, evidencing debasement or perversion or a sense of pleasure in inflicting it.

A COURSE OF CONDUCT¹⁰ requires a series of distinct acts before the victim's death [not including the planning stages for the attack] that are intended to inflict and actually inflict

⁴ See Penal Law § 15.05(1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

⁵ See Penal Law § 125.27(1)(a)(x).

⁶ See Penal Law § 15.05(1).

⁷ See Penal Law § 125.27(1)(a)(x).

⁸ *People v Bohn*, _ NY3d _, 2024 NY Slip Op 01500 (2024).

⁹ *Id.*

¹⁰ *People v Estrella*, 2024 NY Slip Op 01499 (2024).

extreme physical pain. A single, isolated act that causes death does not constitute a course of conduct.

A person engages in a course of conduct INTENDED to inflict extreme physical pain upon the victim prior to the victim's death when his or her conscious objective or purpose is to do so.

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 four elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), caused the death of (specify);
2. That the defendant did so with the intent to cause the death of (specify);
3. That the defendant acted in an especially cruel and wanton manner pursuant to a course of conduct intended to inflict and inflicting torture upon (specify) prior to (specify) death; and
4. That the defendant was more than eighteen (18) years old at the time of the commission of the crime.

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.

[NOTE: If either of the affirmative defenses -- Extreme Emotional Disturbance (§ 125.27(2)(a)) or Aiding a Suicide (§ 125.27(2)(b)) -- applies, omit the final two paragraphs of the above charge, and substitute one of the charges at the end of this article.]