

**Aggravated Strangulation
(Chokehold)
Penal Law § 121.13-a
(Committed on or after June 12, 2020)**

The (*specify*) count is Aggravated Strangulation.

Under our law, a person is guilty of aggravated strangulation when, being a police officer or a peace officer, he or she, uses a chokehold or similar restraint¹ that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air,² and thereby causes serious physical injury or death to that person.

The following term(s) used in that definition (has / have) a special meaning:

Note: If in issue, select appropriate definition of “police officer” set forth in CPL 1.20(34); or definition of “peace officer” set forth in CPL 2.10.

SERIOUS PHYSICAL INJURY means physical injury 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

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 At this point, the definition continues: “as described in paragraph b of subdivision one of section eight hundred thirty-seven-t of the executive law.” This charge substitutes the applicable language from the executive law.

² Whether Penal Law § 15.15 requires that a culpable mental state be stated remains for the court to determine.

³ Penal Law § 10.10(10).

1. That on or about (date), in the County of (County), the defendant, (defendant's name), caused serious physical injury or death to (specify);
2. That the defendant did so by using a chokehold or similar restraint that applied pressure to the throat or windpipe of (specify) in a manner that may have hindered breathing or reduced intake of air; and
3. That the defendant was then a [police officer / peace officer].

[NOTE: If the affirmative defense of Penal Law § 121.14 does not apply conclude as follows:

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

If you find that 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.

[NOTE: If the affirmative defense of Penal Law § 121.14 applies, omit the final two paragraphs of the above charge, and substitute the following: ⁴

If you find that 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.

If you find that the People have proven beyond a reasonable doubt both of those elements, you must consider an affirmative defense the defendant has raised. Remember, if you

⁴ The justification defense for a duly licensed physician, or a person acting under a physician's direction, as set forth in PL § 35.10(5), may also be applicable. If so, the jury should be charged accordingly.

have already found the defendant not guilty of Aggravated Strangulation, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to a prosecution for this crime that the defendant performed such conduct for a valid medical or dental purpose.

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider the evidence presented by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and the convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt the elements of Aggravated Strangulation, you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Aggravated Strangulation.