

HATE CRIME
Penal Law 485.05
(Committed on or after Nov 1, 2020¹)
(Revised May 2021²)

The (specify) count is (name specified offense), as a Hate Crime.³

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, gender identity or expression, religion, religious practice, age of sixty years old or more,⁴ disability or sexual orientation of a person, regardless of whether the belief or perception is correct.⁵

or

¹ By the laws of 2019, c. 8, the words “gender identity or expression” were added to the statute. With the omission of those words, however, this charge remains applicable to crimes committed between on or after October 8, 2000, and November 1, 2019.

² In May 2021, this charge was revised to include the additions stated in footnote one.

³ CPL 200.50 (4) and (7) (c).

⁴ “Age” is defined in Penal Law § 485.05(4)(a) as meaning “sixty years old or more.

⁵ The court need not recite the attributes and related definitions that are not in issue in the case.

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, gender identity or expression, religion, religious practice, age of sixty years old or more, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.⁶

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

Under our law, a person commits the offense of (name specified offense)⁷, when (define the specified offense). Note: If the “specified offense” is defined as a separate count, a cross-reference to that count should suffice.

INTENT means conscious objective or purpose.⁸ 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.

or

⁶ The court need not recite the attributes and related definitions that are not in issue in the case.

⁷ 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.

⁸ See Penal Law § 15.05 (1).

commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding (specify appropriate attribute[s]) when that person's conscious objective or purpose is to do so.

If applicable, select appropriate definition(s):

DISABILITY means a physical or mental impairment that substantially limits a major life activity.⁹

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.¹⁰

Proof of race, color, national origin, ancestry, gender, gender identity or expression, 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.¹¹

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);

⁹ See Penal Law § 485.05(4)(b).

¹⁰ See Penal Law § 485.05(4)(c).

¹¹ See Penal Law § 485.05 (2).

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

3. That the defendant did so intentionally.

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.