§ 125.26 Aggravated murder.

A person is guilty of aggravated murder when:

1. With intent to cause the death of another person, he or she causes the death of such person, or of a third person who was a person described in subparagraph (i), (ii), (ii-a) or (iii) of paragraph (a) of this subdivision engaged at the time of the killing in the course of performing his or her official duties; and

(a) Either:

(i) the intended victim was a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the victim was a police officer; or

(ii) the intended victim was a peace officer as defined in paragraph a of subdivision twenty-one, subdivision twenty-three, twenty-four or sixty-two (employees of the division for youth) of section 2.10 of the criminal procedure law who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the victim was such a uniformed court officer, parole officer, probation officer, or employee of the division for youth; or

(ii-a) the intended victim was a firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse involved in a first response team, or any other individual who, in the course of official duties, performs emergency response activities and was engaged in such activities at the time of killing and the defendant knew or reasonably should have known that the intended victim was such firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse; or

(iii) the intended victim was an employee of a state correctional institution or was an employee of a local correctional facility as defined in subdivision two of section forty of the correction law, who was at the time of the killing engaged in the course of performing his or her official duties, and the defendant knew or reasonably should have known that the victim was an employee of a state correctional

institution or a local correctional facility; and

(b) The defendant was more than eighteen years old at the time of the commission of the crime; or

2. (a) With intent to cause the death of a person less than fourteen years old, he or she causes the death of such person, and the defendant acted in an especially cruel and wanton manner pursuant to a course of conduct intended to inflict and inflicting torture upon the victim prior to the victim's death. As used in this subdivision, "torture" means the intentional and depraved infliction of extreme physical pain that is separate and apart from the pain which otherwise would have been associated with such cause of death; and

(b) The defendant was more than eighteen years old at the time of the commission of the crime.

3. In any prosecution under subdivision one or two of this section, it is an affirmative defense that:

(a) (i) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, aggravated manslaughter in the first degree, manslaughter in the first degree or any other crime except murder in the second degree. (ii) It shall not be a "reasonable explanation or excuse" pursuant to subparagraph (i) of this paragraph when the defendant's conduct resulted from the discovery, knowledge or disclosure of the victim's sexual orientation, sex, gender, gender identity, gender expression or sex assigned at birth; or

(b) The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, aggravated manslaughter in the second degree, manslaughter in the second degree or any other crime except murder in the second degree.

Aggravated murder is a class A-I felony.