

### **CR1404 Aggravated Murder Elements When Extreme Emotional Distress Is at Issue.**

The defendant, [DEFENDANT'S NAME], is charged with Aggravated Murder. You cannot convict (him) (her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, [DEFENDANT'S NAME];
2. Intentionally or knowingly;
3. Caused the death of [VICTIM'S NAME]; and
4. That the defendant did so under any one or more of the following circumstances: (INSERT ALL APPLICABLE AGGRAVATING CIRCUMSTANCES HERE); and
5. That the defendant did not cause the death of ~~the victim~~[VICTIM'S NAME] under the influence of extreme emotional distress for which there is a reasonable explanation or excuse.
6. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY of Aggravated Murder. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Aggravated Murder.

### **References**

#### **Committee Notes**

If the date or location of a crime is an element of the offense, those can be included within the list of elements. In some circumstances, identifying the specific counts might assist the jury in sorting through offenses with overlapping elements. In those circumstances, the specific count to which the instruction applies should be identified in the first paragraph.

\*See explanatory note at the beginning of the homicide section. The committee recommends that practitioners consider replacing this phrase with more specific language relating to the legal justification or excuse at issue in the case. For example, if the issue is self-defense, this element could be tailored to: "That the defendant did not act in self-defense."

This instruction applies only to crimes committed prior to May 12, 2009. For crimes committed on May 12, 2009 and thereafter, see special mitigation instructions relating to extreme emotional distress.

Last Revised – 09/04/2019