

Ala. Code 1975, § 13A-10-40

Bail Jumping in the Second Degree

The defendant is charged with bail jumping in the second degree.

A person commits the crime of bail jumping in the second degree if, having been lawfully released from custody, with or without bail, upon condition that he/she will subsequently appear at a specified time and place in connection with a charge of his/her having committed any Class C felony or any misdemeanor, he/she fails to appear at the time and place.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The Defendant had been lawfully released from custody, with or without bail, upon condition that he/she would subsequently appear at a specified time and place, **[insert description]**;
- (2) The Defendant's release was in connection with a charge of his/her having committed murder or any Class C felony or any misdemeanor, **[insert charge]**;
- (3) The Defendant failed to appear at the time and place; **(AND)**
- (4) The Defendant acted **[insert appropriate mens rea element - See Use Notes]**.

Custody is a restraint or detention by a public servant pursuant to a lawful arrest, conviction or order of court, but does not include mere supervision of probation or parole, or constraint incidental to release on bail. [13A-10-30(b)(1)]

A *Class C Felony* is a crime for which a sentence to a term of imprisonment for not more than 10 years or less than 1 year and a day may be imposed. [13A-5-6(a)(3)]

A *misdemeanor* is an offense for which a sentence to a term of imprisonment not in excess of one year may be imposed. [13A-1-2(9); 13A-5-7]

[Read as appropriate]: It is a defense that the Defendant's failure to appear was unintentional or was unavoidable and due to circumstances beyond his/her control. The burden of injecting the defense is on the Defendant.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of bail jumping in the second degree, then you shall find the defendant guilty of bail jumping in the second degree.

If you find that the State has failed to prove any one or more of the elements of bail jumping in the second degree, then you cannot find the defendant guilty of bail jumping in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

The term *custody* refers to a public servant. Public servant is not defined in this article. However, a definition can be found in a prior article in the same chapter: *Public servant* is any officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant, or otherwise in performing a governmental function. [13A-10-1(7)]

The statute does not state a specific mens rea element.

Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

- (1) A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]
- (2) A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
- (3) A person acts *recklessly* with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
- (4) A person acts with *criminal negligence* with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Approved 8-20-15.]