

Ala. Code 1975, § 13A-13-1

Bigamy

The defendant is charged with bigamy.

A person commits the crime of bigamy if he/she intentionally contracts or purports to contract a marriage with another person when he/she has a living spouse.

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

- (1) The defendant contracted or purported to contract a marriage with another person;
- (2) The defendant had a living spouse; **(AND)**
- (3) The defendant did so intentionally.

[Read as appropriate]: A person who contracts a marriage outside this state, which would be bigamous if contracted in this state, commits bigamy by cohabiting in the state with the other party to such a marriage. [13A-13-1(a)]

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)]

[Read as appropriate]: A person does not commit bigamy if:

- (a) He/She reasonably believed that his/her previous marriage was void or was dissolved by death, divorce or annulment; **(OR)**
- (b) He/She and the prior spouse had been living apart for five consecutive years next prior to the subsequent marriage, during which time the prior spouse was not known by him/her to be alive.

The burden of injecting this issue is on the defendant, but this does not shift the burden of proof. [13A-13-1(b)]

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

If you find that the State has failed to prove any one or more of the elements of bigamy, then you cannot find the defendant guilty of bigamy.

Use Notes

Bigamy can occur where either or both of the marriages is common law. [13A-13-1, Commentary]

The fact that the second marriage could not be legally contracted (e.g., by reason of youth or mental defect) would not be a defense. [13A-13-1, Commentary]

The defense of reasonable belief in 13A-13-1(b)(1) is to cover legitimate cases of mistake of fact or law. [13A-13-1, Commentary] Remarriage without waiting 60 days after the divorce decree or during the pendency of an appeal has been held bigamous. See *Brand v. State*, 242 Ala. 15, 6 So. 2d 446 (Ala. 1941).

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