

Ala. Code 1975, § 13A-5-40(a)(19)

Murder Where a Court Had Issued a Protective Order

The defendant is charged with capital murder. The law states that the intentional murder of a person by the defendant where a court had issued a protective order for the victim, against the defendant, pursuant to Section 30-5-1 *et seq.*, or the protective order was issued as a condition of the defendant's pretrial release, is capital murder.

A person commits an intentional murder if he/she causes the death of another person and, in performing the act or acts that cause the death of that person, he/she intends to kill that person.

To convict, the State must prove beyond a reasonable doubt each of the following elements of intentional murder committed where a court had issued a protective order for the victim, against the defendant, pursuant to Section 30-5-1 *et seq.*, Ala. Code 1975, or the protective order was issued as a condition of the defendant's pretrial release:

- (1) That (name of deceased) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased):

[Read as appropriate]:

- (A) After a court had issued a protective order for the deceased, against the defendant, pursuant to Section 30-5-1 *et seq.*;

(OR)

- (B) After the protective order for the deceased was issued as a condition of the defendant's pretrial release;
- (3) That the protective order was in force and effect at the time of the act(s) that caused the death of (name of the deceased);
- (4) That in committing the act(s) that caused the death of (name of deceased), the defendant intended to kill (name of deceased).

A person acts *intentionally* when it is his/her purpose to cause the death of another person. The intent to kill must be real and specific.

A *protective order* is any order issued by any court with jurisdiction to issue protection orders pursuant to Ala. Code 1975, Section 30-5-1 *et seq.*, in a civil or domestic relations action, relating to the deceased as the protected person or one of the protected

persons and having enjoined or restrained the defendant from contact, or from some other conduct or activity. It further applies to any order of protection enjoining or restraining the defendant from any contact, conduct, or some other activity involving the deceased, issued by a court of competent jurisdiction as a condition of the defendant's pretrial release.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of murder by the defendant where a court had issued a protective order for the victim, against the defendant, pursuant to Section 30-5-1 *et seq.*, or the protective order was issued as a condition of the defendant's pretrial release, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of murder by the defendant where a court had issued a protective order for the victim, against the defendant, pursuant to Section 30-5-1 *et seq.*, or the protective order was issued as a condition of the defendant's pretrial release, then you cannot find the defendant guilty of capital murder.

(If lesser-included offenses are included, the court should instruct on those offenses at this point.)

[Adopted 4-7-17.]

Use Notes

If evidence exists that the defendant was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See *Fletcher v. State*, 621 So. 2d 1010 (Ala. Crim. App. 1993)

If the order of protection arose from a civil or domestic relations case, the court should review Ala. Code 1975, § 30-5-1 *et seq.*, to ensure the protective order qualifies.

The doctrine of transferred intent may apply to transfer the intent to kill from one individual to another. However, when the statute is specific regarding the circumstances, the doctrine does not operate to transfer the factual circumstances surrounding the murder. When the statute specifies a specific class (*i.e.*, a victim who has obtained a protective order against a defendant), it does not appear that the intent necessary to commit this particular capital offense can be transferred to an unintended victim who did not have a protective order issued against the defendant. See *State v. Phillips*, 842 So. 2d 27 (Ala. Crim. App. 2002); *Ex parte Jackson*, 614 So. 2d 405 (Ala. 1993).