

**Ala. Code 1975, § 13A-6-2(a)(3)**

**Murder**  
**(Felony Murder)**

The defendant is charged with murder.

A person commits the crime of murder if he/she commits or attempts to commit:  
**[Read all appropriate]:**

- (A) Arson in the first degree;
- (B) Burglary in the first or second degree;
- (C) Escape in the first degree;
- (D) Kidnapping in the first degree;
- (E) Rape in the first degree;
- (F) Robbery in any degree;
- (G) Sodomy in the first degree; **(OR)**
- (H) Any other felony clearly dangerous to human life;

and, in the course of and in furtherance of the crime that he/she is committing or attempting to commit, or in immediate flight therefrom, he/she, or another participant if there be any, causes the death of any person.

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

- (1) A person **[insert name of deceased]** is dead;
- (2) The defendant committed or attempted to commit: **[Read all appropriate]:**
  - (1) Arson in the first degree;
  - (2) Burglary in the first or second degree;
  - (3) Escape in the first degree;
  - (4) Kidnapping in the first degree;
  - (5) Rape in the first degree;
  - (6) Robbery in any degree;
  - (7) Sodomy in the first degree; **(OR)**
  - (8) Any other felony clearly dangerous to human life; **(AND)**
- (3) In the course of and in furtherance of the crime that the defendant was committing or attempting to commit, or in immediate flight therefrom, he/she, or another participant, if there be any, caused the death of any person, **[insert name of deceased]**, by **[describe the act, such as shooting him/her]**.

**[Read all appropriate]:** To convict the defendant of murder the State also must prove beyond a reasonable doubt that the defendant committed the crime of **[insert name of a listed felony & insert appropriate instructions for the particular felony]** (OR) a felony that was clearly dangerous to human life, **[insert name of felony & insert appropriate instructions for the particular felony]**. [See Use Note]

**[Read As Appropriate]:** A person attempts to commit a crime if, with intent to commit a specific offense, he/she does any overt act towards the commission of that offense. [13A-4-2(a)]

**[Read as appropriate]:** A *person*, when referring to the victim, means a human being, including an unborn child in utero at any stage of development, regardless of viability. [13A-6-1(a)(3)]

**[Read as appropriate]:** A *participant* is one who would be legally accountable:  
**[Read all appropriate]:**

- (1) As being the one procured, induced or caused;
- (2) The one doing the procuring, inducing or causing of another to commit the offense;
- (3) Aiding and abetting the commission of the offense; **(OR)**
- (4) In failing to make such effort as he/she was legally required to make to prevent the commission of the offense. [See 13A-2-23]

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

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of murder, then you cannot find the defendant guilty of murder.

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

### Use Notes

In *Ex parte Mitchell*, 936 So.2d 1094 (Ala. Crim. App. 2006), the Court held that the trier of fact must consider the facts and circumstances of a particular case to determine if the felony was inherently dangerous in the manner and the circumstances in which it was committed.

For unborn child exceptions see 13A-6-1(b) through (e).

[Approved 10-14-15.]