

Ala. Code 1975, § 13A-6-20(a)(5)

**Assault First Degree
(Driving Under the Influence)**

The defendant is charged with assault in the first degree.

A person commits the crime of assault in the first degree if, while driving under the influence of alcohol or a controlled substance or any combination thereof, he/she causes serious physical injury to the person of another with a vehicle or vessel.

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

- (1) The defendant caused a serious physical injury to a person, **[Insert name of injured person]**;
- (2) The defendant caused the injury with a vehicle or vessel;
- (3) The defendant did so while under the influence of alcohol or a controlled substance or any combination thereof; **(AND)**
- (4) The defendant was the driver or operator of a vehicle or vessel and was driving or operating the vehicle or vessel while: **[Read all appropriate]**:
 - A. There was 0.08% **[Use 0.02% if the defendant was under 21, a school bus driver or day care driver]** or more by weight of alcohol in his/her blood;
 - B. Under the influence of alcohol;
 - C. Under the influence of a controlled substance to a degree which rendered him/her incapable of safely driving;
 - D. Under the combined influence of alcohol and a controlled substance to a degree which rendered him/her incapable of safely driving; **(OR)**
 - E. Under the influence of any substance which impaired his/her mental or physical facilities to a degree which rendered him/her incapable of safely driving

[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)]

Serious physical injury is physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ. [13A-1-2(14)]

Physical injury is impairment of physical condition or substantial pain. [13A-1-2(12)]

A *vehicle* is any propelled device in, upon, or by which any person or property is transported on land, water, or in the air and includes motor vehicles, motorcycles, motorboats, aircraft, and any vessel propelled by machinery, whether or not that machinery is the principal source of propulsion. [13A-1-2(15) & 13A-8-1(10)]

[Read as appropriate]: A person is *under the influence of alcohol* where he/she has consumed such an amount of alcohol as to affect his/her ability to operate a vehicle in a safe manner. See *Rice v. State*, 611 So. 2d 1161, 1163 (Ala. Crim. App. 1992).

[Read as appropriate]: Even if the defendant has proven that he/she was legally entitled to use alcohol, or was legally entitled to use a controlled substance, neither one of those circumstances constitutes a defense to the charge of assault first degree.

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

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

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

Use Notes

Controlled substances are enumerated in Schedules I-V, codified in §§ 20-2-21 through 20-2-32, Ala. Code 1975.

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

[Approved 10-14-15.]