

Ala. Code 1975, § 13A-6-4

Criminally Negligent Homicide

The defendant is charged with criminally negligent homicide.

A person commits the crime of criminally negligent homicide if he/she causes the death of another person by criminal negligence.

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 caused the death of **[insert name of deceased]** by **[describe the act, such as shooting him/her]; (AND)**
- (3) In committing the act which caused the death of **[insert name of deceased]**, the defendant acted with criminal negligence.

[Read as appropriate] (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)]

A person acts with *criminal negligence* with respect to a result or to a circumstance which is defined by statute as an offense 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.

[Read as appropriate] You may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Read as appropriate]: To help you decide whether the defendant was criminally negligent, you may consider the following statutes or ordinances:

[Read all appropriate statutes or ordinances].

[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).

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

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

Use Notes

An instruction on criminally negligent homicide is proper only where the victim's death was caused by the defendant's inadvertent creation and subsequent disregard of a risk of harm of which he/she should have been aware, but of which, in fact, he/she was not aware. To warrant the giving of such an instruction there must be some evidence that the defendant was not aware of the risk he/she was creating. *Lovell v. State*, 521 So. 2d 1346 (Ala. Crim. App. 1987).

Intent is not an element of criminally negligent homicide. *Kitsos v. State*, 574 So. 2d 979 (Ala. Crim. App. 1990).

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.]