

Ala. Code 1975, § 15-20A-6

Allegation of Sexual Motivation

I. To Be Given in *Non-Bifurcated* Trial Before Guilt Deliberation

- A. If after consideration of the guilt of the defendant you find him/her guilty of any crime, you shall then consider whether the State has proven beyond a reasonable doubt that the defendant committed the offense of **[Insert offense]** with a sexual motivation. **[If you charge the jury as to any lesser included offense not covered by sexual motivation, you may wish to ask the jury to return its verdict prior to proceeding to any penalty proceeding as that proceeding may no longer be necessary if the convicted offense is not covered by sexual motivation.]**

Sexual motivation means that one of the purposes for which the defendant committed the crime was for the purpose of the sexual gratification of the defendant. [15-20A-6(f)]

- B. The State of Alabama alleges that the defendant committed the offense of **[Insert offense]** with a sexual motivation. You are to consider all the evidence you have heard to determine whether sexual motivation exists. The State has the burden of proving beyond a reasonable doubt to each of you that the defendant committed the offense of **[Insert offense]** with a sexual motivation before you can find its existence. The phrase "reasonable doubt" means the same thing as I have previously defined. If, after considering all the evidence each and every one of you is convinced of the existence of sexual motivation beyond a reasonable doubt, then it will be your duty to find that the defendant committed the offense of **[Insert offense]** with a sexual motivation. However, if you have a reasonable doubt about its existence, you must find that the defendant did not commit the offense of **[Insert offense]** with a sexual motivation. The jury must unanimously find that the defendant committed the offense of **[Insert offense]** with a sexual motivation before there is a verdict that the defendant committed the offense of **[Insert offense]** with a sexual motivation.
- C. The evidence upon which a reasonable doubt that the defendant committed the offense of **[Insert offense]** with a sexual motivation may be based is the evidence you have heard during this trial. The defendant does not have to disprove anything about a sexual motivation. The burden is wholly upon the State to prove a sexual motivation beyond a reasonable doubt. A reasonable doubt about a sexual motivation may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.

- D. In determining whether the defendant committed the offense of **[Insert offense]** with a sexual motivation, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict must be based solely upon the evidence and testimony you have seen and heard and the law on which I have instructed you. **[Read as appropriate]:** You are not to concern yourselves with the sentence length or the disposition of the case as they are matters for the court.
- E. I will provide you with a Special Verdict Form. Complete this form only if you find the defendant guilty.

[Read Form and Provide It To Jury]

[SAMPLE: Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt that the defendant committed the offense of **[Insert offense]** with a sexual motivation?

Circle one: Yes No

Signature of Foreperson]

II. To Be Given in *Bifurcated* Trial After Guilt Determination

A. Instruction *Before* Penalty Proceeding Begins

1. To Be Given to Jury That ***Decided Guilt***

Ladies and gentlemen of the jury, you have found the defendant guilty of **[Insert charge of conviction]**. In this proceeding, you will not concern yourself with the question of guilt but rather whether the State has proven beyond a reasonable doubt that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation.

Sexual motivation means that one of the purposes for which the defendant committed the crime was for the purpose of the sexual gratification of the defendant. [15-20A-6(f)]

You are to consider the evidence you have already heard in the guilt phase, as well as the evidence you are about to hear to determine whether sexual motivation exists. At the conclusion of the taking of the evidence and after argument of counsel, you will be further instructed.

2. To Be Given to a Jury That ***Did Not Decide Guilt***

Ladies and gentlemen of the jury, in a separate proceeding the defendant has been found guilty of **[Insert charge of conviction]**. In this proceeding, you will not concern yourself with the question of guilt but rather with whether the State has proven beyond a reasonable doubt that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation.

Sexual motivation means that one of the purposes for which the defendant committed the crime was for the purpose of the sexual gratification of the defendant. [15-20A-6(f)]

You are to consider the evidence you are about to hear to determine whether sexual motivation exists. At the conclusion of the taking of the evidence and after argument of counsel, you will be further instructed.

B. Instruction after Closing Argument

1. Ladies and gentlemen of the jury, it is now your duty to find whether the State has proven beyond a reasonable doubt that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation.

Sexual motivation means that one of the purposes for which the defendant committed the crime was for the purpose of the sexual gratification of the defendant. [15-20A-6(f)]

2. The State of Alabama alleges that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation. You are to consider all the evidence you have heard to determine whether sexual motivation exists. The State has the burden of proving beyond a reasonable doubt to each of you that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation before you can find its existence. The phrase "reasonable doubt" means the same thing as I have previously defined. **[Or if new Jury, insert definition of reasonable doubt here.]** If, after considering all the evidence each and every one of you is convinced of the existence of sexual motivation beyond a reasonable doubt, then it will be your duty to find that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation. However, if you have a reasonable doubt about its existence, you must find that the defendant did not commit the offense of **[Insert charge of conviction]** with a sexual motivation. The jury must unanimously find that the defendant committed the

offense of **[Insert charge of conviction]** with a sexual motivation before there is a verdict that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation.

3. The evidence upon which a reasonable doubt that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation may be based is the evidence you have heard during this proceeding. The defendant does not have to disprove anything about a sexual motivation. The burden is wholly upon the State to prove a sexual motivation beyond a reasonable doubt. A reasonable doubt about sexual motivation may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.
4. In determining whether the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict must be based solely upon the evidence and testimony you have seen and heard and the law on which I have instructed you.

[Read as appropriate] You are not to concern yourselves with the sentence length or the disposition of the case as they are matters for the court.

5. I will provide you with a Special Verdict Form. Complete this form once you have reached your verdict.

[Read Form and Provide It To Jury]

[SAMPLE: Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt that the defendant committed the offense of **[Insert charge of conviction]** with a sexual motivation?

Circle one: Yes No

Signature of Foreperson]

Use Notes

An allegation of sexual motivation may be filed in any criminal case classified as a felony or Class A misdemeanor. [15-20A-6(a)]

This section does not apply to sex offenses as defined in 15-20A-5(1) through (38), inclusive of 15-20A-6(g).

[Approved 9-8-15.]