

Ala. Code 1975, § 13A-10-102

Perjury II

The defendant is charged with perjury in the second degree.

A person commits the crime of perjury in the second degree if he/she swears with intent to mislead a public servant in the performance of his/her duty and his/her false statement is material to the action, proceeding or matter involved.

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

- (1) The defendant swore [**describe statement**], with intent to mislead a public servant [**describe**], in the performance of his/her duty;
- (2) The defendant's false statement was material to the action, proceeding or matter involved; **(AND)**
- (3) The defendant acted [**insert appropriate mens rea element - See Use Notes**].

Swears Falsely and False Swearing is the making of a false statement under oath required or authorized by law, or the swearing or affirming the truth of such statement previously made, which the declarant does not believe to be true. A false swearing in a subscribed written instrument shall not be deemed complete until the instrument is delivered by its subscriber, or by someone acting in his/her behalf, to another person with intent that it be uttered or published as true. [13A-10-100(b)(1)]

Oath includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated. Written statements shall be treated as if made under oath if [**Read as appropriate**]:

- a. The statement was made on or pursuant to form bearing notice, authorized by law, to the effect that false statements made therein are punishable; **(OR)**
- b. The statement recites that it was made under oath, the declarant was aware of such recitation at the time he/she made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto. [13A-10-100(b)(3)]

[Read as appropriate]: *Jurat* is a clause wherein a notary public or other attesting officer authorized by law to administer oaths in connection with affidavits, depositions and other subscribed written instruments certifies that the subscriber has appeared before him/her and sworn to the truth of the contents thereof. [13A-10-100(b)(6)]

An oath is *Required or Authorized by Law* when the use of the oath is provided for by statute or municipal ordinance. [13A-10-100(b)(4)]

A statement is *Material*, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law. [13A-10-100(b)(2)]

[Read as appropriate]: Where a person has made statements under oath which are inconsistent to the degree that one of them is necessarily false, it shall not be necessary for the prosecution to prove which statement was false, but only that one or the other was false and not believed by the defendant to be true. [13A-10-104(a)]

[Read as appropriate]: In any prosecution for perjury, the falsity of a statement may not be established by the uncorroborated testimony of a single witness. [13A-10-105]

[Read as appropriate]: No person shall be convicted of perjury if he/she retracted his/her false statement in the course of the same proceeding in which it was made before it became manifest that the falsification was or would be exposed. Statements made in separate hearings at separate stages of the same trial or administrative proceeding shall be deemed to have been made in the course of the same proceeding. The burden of injecting the issue of retraction is on the defendant, but this does not shift the burden of proof. [13A-10-107]

[Read as appropriate]: It is no defense to prosecution for perjury **[Read as appropriate]:**

- (1) That the oath was administered in an irregular manner;
- (2) That there was some irregularity in the appointment or qualification of the person who administered the oath, if the taking of the oath was required or authorized by law;
- (3) That the document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he/she signed the document and the document contains the signed jurat of a public servant authorized to administer oaths;
- (4) That the defendant mistakenly believed the false statement to be immaterial; **(OR)**
- (5) That the statement was inadmissible under the law of evidence. [13A-10-108]

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

If you find that the State has failed to prove any one or more of the elements of perjury in the second degree, then you cannot find the defendant guilty of perjury in the second degree.

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

Use Notes

The statute does not state a specific mens rea element.

Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

- (1) A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]
- (2) A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
- (3) A person acts *recklessly* with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
- (4) A person acts with *criminal negligence* with respect to a result or to a circumstance 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. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Approved 6-17-16.]