

Ala. Code 1975, § 13A-11-241(b)

Cruelty to Dog or Cat in the Second Degree

The defendant is charged with cruelty to a dog or cat in the second degree.

A person commits the crime of cruelty to a dog or cat in the second degree if he/she, in a cruel manner, overloads, overdrives, deprives of necessary sustenance or shelter, unnecessarily or cruelly beats, injures, mutilates, or causes the same to be done a dog or a cat.

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

(1) The defendant: **[Read as appropriate]**:

(a) Overloaded;

(b) Overdrove;

(c) Deprived of necessary sustenance or shelter; **(OR)**

(d) Unnecessarily or cruelly beat, injured, mutilated;

A dog or a cat; or caused the same to be done;

(2) The defendant did so in a cruel manner; **(AND)**

(3) The Defendant acted **[insert appropriate mens rea element - See Use Notes]**.

The words *dog or cat* shall mean any domesticated member of the dog or cat family. [13A-11-240(c)]

Cruel means every act, omission, or neglect, including abandonment, where unnecessary or unjustifiable pain or suffering, including abandonment, is caused or where unnecessary pain or suffering is allowed to continue. [13A-11-240(b)]

[Read as appropriate]: The Defendant cannot be convicted if he/she is one of the following persons or institutions: **[Read as appropriate]**:

1. Academic and research enterprises that use dogs or cats for medical or pharmaceutical research or testing;
2. Any owner of a dog or cat who euthanizes the dog or cat for humane purposes;
3. Any person who kills a dog or cat found outside of the owned or rented property of the owner or custodian of the dog or cat when the dog or cat threatens immediate physical injury or is causing physical injury to any person, animal, bird, or silvicultural or agricultural industry;

4. A person who shoots a dog or cat with a BB gun not capable of inflicting serious injury when the dog or cat is defecating or urinating on the person's property;
(OR)
5. A person who uses a training device, anti-bark collar, or an invisible fence on his/her own dog or cat or with permission of the owner.[13A-11-246]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of cruelty to a dog or cat in the second degree, then you shall find the defendant guilty of cruelty to a dog or cat in the second degree.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of cruelty to a dog or cat in the second degree, then you cannot find the defendant guilty of cruelty to a dog or cat 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). Interpreting a similar statute, the Alabama Court of Criminal Appeals has held that the offense of discharging a firearm into an occupied vehicle can be committed intentionally, knowingly, recklessly, or with criminal negligence. *Harrison v. State*, 879 So. 2d 594, 600 (Ala. Crim. App. 2003).

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 05/09/19]