

**Ala. Code 1975, §13A-11-290(c)(4)**

**Leaving Child or Incapacitated Person Unattended in Motor Vehicle**

**(Physical Injury)**

The Defendant is charged with leaving a child or an incapacitated person unattended in a motor vehicle resulting in physical injury.

A person commits the crime of leaving a child or an incapacitated person unattended in a motor vehicle resulting in physical injury if he/she/it is a licensed day care center, a licensed child care facility, a program providing day care service to incapacitated persons, or any other child care service that is exempt from licensing pursuant to Section 38-7-3, or an employee thereof, or a person for hire responsible for a child under the age of 7 or an incapacitated person; and he/she/it leaves a child or incapacitated person in a motor vehicle unattended in a manner that creates an unreasonable risk of injury or harm, and the child or incapacitated person receives physical injury as a result of this act.

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

(1) The Defendant was **[Read as appropriate]:**

- (a) A licensed day care center;
- (b) A licensed child care facility;
- (c) A program providing day care service to incapacitated person;
- (d) Any child care service that was exempt from licensing pursuant to Section 38-7-3;
- (e) An employee of,
  - (i) A licensed day care center;
  - (ii) A licensed child care facility;
  - (iii) A program providing day care service to incapacitated person; **[OR]**
  - (iv) Any child care service that was exempt from licensing pursuant to Section 38-7-3;

**[OR]**

- (f) A person for hire responsible for a child under the age of 7 or an incapacitated person;
- (2) The Defendant left a child or an incapacitated person, **[insert name]**, in a motor vehicle unattended in a manner that created an unreasonable risk of injury or harm to the child or incapacitated person;

(3) The child or incapacitated person received physical injury as a result of this act;  
**(AND)**

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

*Incapacitated person* is any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions. [13A-11-290(b) & 26-2A-20(8)]

*Motor Vehicle* means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for electric personal assistive mobility devices. [13A-11-290(b) & 32-1-1.1(32)]

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

**[Read as appropriate]: [insert Section 38-7-3]**

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of leaving a child or an incapacitated person unattended in a motor vehicle resulting in physical injury, then you shall find the defendant guilty of leaving a child or an incapacitated person unattended in a motor vehicle resulting in physical injury.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of leaving a child or an incapacitated person unattended in a motor vehicle resulting in physical injury, then you cannot find the defendant guilty of leaving a child or an incapacitated person unattended in a motor vehicle resulting in physical injury.

**[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 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 07/29/19]