

Ala. Code 1975, § 13A-11-61

Discharging Firearm into Unoccupied Building

The defendant is charged with discharging a firearm into an unoccupied building.

A person commits the crime of discharging a firearm into an unoccupied building if he/she shoots or discharges a firearm, explosive or other weapon which discharges a dangerous projectile into an unoccupied **[Read as appropriate]**: dwelling or building or railroad locomotive or railroad car, aircraft, automobile, truck or watercraft in this state.

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

- (1) The defendant shot or discharged a firearm, explosive or other weapon which discharges a dangerous projectile, **[describe weapon]**, into an unoccupied **[Read as appropriate]**: dwelling or building or railroad locomotive or railroad car, aircraft, automobile, truck or watercraft, **[describe place]**, in this state; **(AND)**
- (2) The Defendant acted **[insert appropriate mens rea element - See Use Notes]**.

A *firearm* is a weapon from which a shot is discharged by gunpowder. [13A-8-1(5)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of discharging a firearm into an unoccupied building, then you shall find the defendant guilty of discharging a firearm into an unoccupied building.

If you find that the State has failed to prove any one or more of the elements of discharging a firearm into an unoccupied building, then you cannot find the defendant guilty of discharging a firearm into an unoccupied building.

[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). 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 04-15-16.]