

Ala. Code 1975, § 13A-5-40(a)(13)

Murder Within 20 Years of a Previous Murder Conviction

The defendant is charged with capital murder. The law states that an intentional murder committed within 20 years of a previous murder conviction is capital murder.

A person commits an intentional murder within 20 years of a previous murder conviction if he causes the death of another person and, in performing the act or acts which cause the death of that person, he intends to kill that person (or another person), and at the time of the intentional murder he had previously been convicted of another murder in the 20 years preceding the murder of the deceased in this case.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder within 20 years of a previous murder conviction:

- (1) That (name of deceased person) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased) by (state the alleged act, e.g., shooting) him;
- (3) That in committing the act(s) that caused the death of (name of deceased) the defendant intended to kill the deceased or another person; and
- (4) That the murder was committed within 20 years of a prior murder conviction of the defendant.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

"Prior murder conviction" includes murder in any degree as defined at the time and place of the prior conviction.

During the trial you heard evidence concerning whether the defendant had previously been convicted of a murder. The one and only reason you were permitted to hear that evidence is that one of the elements of the capital offense is a conviction of murder within the 20 years immediately preceding the murder(s) alleged in this case. This is the only reason evidence about whether the defendant has previously been convicted of murder was admitted, and that is the only purpose for which you may consider it.

You are not to consider the evidence that the defendant may have been convicted of murder on a previous occasion as evidence that he did commit the alleged murder(s) with which he is charged in this case. The law of this state requires that when

you are deciding whether the State has proved beyond a reasonable doubt that the defendant committed the alleged murder(s) charged in this case, you cannot consider any evidence that the defendant may have previously been convicted of another murder.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder within 20 years of a previous murder conviction, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder within 20 years of a previous murder conviction, then you cannot find the defendant guilty of capital murder.

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

Use Notes

In addition to the cautionary instruction on the use of the defendant's prior murder conviction that should be given as part of the oral charge, a similar cautionary instruction may also be given at the time evidence of that prior murder conviction is admitted during the trial.

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See *Fletcher v. State*, 621 So. 2d 1010 (Ala. Crim. App. 1993).

[Adopted 7-30-10.]