

**Ala. Code 1975, § 13A-5-40(a)(20)**

**MURDER OF A PARENT OR LEGAL GUARDIAN IN THE PRESENCE OF A CHILD**

The defendant is charged with capital murder. The law states that the intentional murder of a person by the defendant when the person is the parent or legal guardian of a child under the age of 14 years at the time of the offense and the offense was committed in the presence of the child is capital murder.

A person commits an intentional murder if he/she causes the death of another person and, in performing the act or acts that cause the death of that person, he/she intends to kill that person.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of a parent or legal guardian in the presence of a child:

- (1) That (name of the deceased) is dead;
- (2) That (name of deceased) was the parent or legal guardian of (name of child) in whose presence the murder was committed;
- (3) That (name of child) was under the age of 14 years at the time of the offense;
- (4) That (name of the defendant) caused the death of (name of the deceased) by (state the alleged act, e.g., shooting) him/her; and
- (5) That in committing the act or acts that caused the death of (name of deceased), the defendant intended to kill (name of deceased).

An act occurs *in the presence of a child* if it occurs in the physical presence of a child or if the actor has knowledge that a child is present and may see or hear the act. [§ 13A-5-40(20), Ala. Code 1975]

A person acts *knowingly* with respect to conduct or to a circumstance when he/she is aware that his/her conduct is of that nature or that the circumstance exists.

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

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 of a parent

or legal guardian in the presence of a child, 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 of a parent or legal guardian in the presence of a child, 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**

The definition of "legal guardian" is not specified in the Alabama Criminal Code. However, the Alabama Juvenile Justice Act defines a "legal guardian" as "[a] person who has been appointed by a probate court pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act ... to be a guardian of a person under 19 years of age who has not otherwise had the disabilities of minority removed." Ala. Code 1975, § 12-15-102(17). A "legal guardian" does not include a guardian ad litem. *Id.*

If evidence exists that the defendant 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).

The doctrine of transferred intent may apply to transfer the intent to kill from one individual to another. However, when the statute is specific regarding the circumstances, the doctrine does not operate to transfer the factual circumstances surrounding the murder. When the statute specifies a specific class (*i.e.*, a victim who is the parent or legal guardian of a child that is under the age of 14 years and that is present), it does not appear that the intent necessary to commit this particular capital offense can be transferred to an unintended victim who was not the parent or legal guardian of a child that was under the age of 14 years and that was present. See State v. Phillips, 842 So. 2d 27 (Ala. Crim. App. 2002); Ex parte Jackson, 614 So. 2d 405 (Ala. 1993).

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