Ala. Code 1975, § 13A-5-40(a)(3)

MURDER DURING SODOMY IN THE FIRST DEGREE
(Or Attempt Thereof)*
(Forcible Compulsion)

The defendant is charged with capital murder. The law states that an intentional murder committed during sodomy in the first degree 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 (or another person).

A person commits sodomy in the first degree if he/she engages in any sexual act involving the genitals of one person and the mouth or anus of another person by forcible compulsion. [13A-6-63(a)(1)]

To convict, the State must prove beyond a reasonable doubt each of the following elements of intentional murder during sodomy in the first degree:

(1) That (name of deceased) 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/her;

(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;

(4) That the defendant engaged with (name of victim) in a sexual act involving the genitals of one person and the mouth or anus of another person;

(5) That the defendant did so by forcible compulsion; **(AND)**

(6) That the murder took place during the sodomy.

Sodomy is any sexual act involving the genitals of one person and the mouth or anus of another person. [13A-6-60(5)]

Forcible compulsion is the use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Forcible compulsion does not require proof of resistance by the victim. [13A-6-60(1)]

[Read as appropriate] Factors to be considered in determining an implied

threat include, but are not limited to: (1) the respective ages and sizes of the victim and the accused; (2) the respective mental and physical conditions of the victim and the accused; (3) the atmosphere and physical setting in which the incident was alleged to have taken place; (4) the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim; or (5) whether the victim was under duress. [13A-6-60(1)]

[Read as appropriate] *Forcible compulsion* may exist in the absence of physical force or threat of harm if an adult engages in nonconsensual sexual contact with a minor child and that child holds a special relationship of trust with the adult.

During means in the course of the commission of or in connection with (or in immediate flight from) the commission of the sodomy. [13A-5-39(2)]

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 during sodomy in the first degree, 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 during sodomy in the first degree, 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

*This offense encompasses an attempt thereof. If the facts and law support the charge, then the instructions should be modified to reflect that. This includes modifying the elements in the instructions.

The definitions of *sodomy* and *forcible compulsion* apply only to offenses that occurred on or after September 1, 2019. If the offense occurred before September 1, 2019, use the 1994 Revised Pattern Jury Instructions.

A conviction for first-degree sodomy may be found in the absence of physical force or an express threat of harm if the defendant is an adult who holds a special relationship of trust with his/her child victim (e.g., when a parent engages in nonconsensual sexual intercourse with a minor child). Cf. Powe v. State, 597 So. 2d 721, 724-29 (Ala. 1991) (rape case).

If evidence exists that the defendant was intoxicated at the time of the charged intentional crime, he/she is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010, 1020-22 (Ala. Crim. App. 1993).