Ala. Code 1975, § 13A-5-40(a)(5)

MURDER OF LAW-ENFORCEMENT OFFICER OR GUARD
(While on Duty)

The defendant is charged with capital murder. The law states that the intentional murder of a law-enforcement officer or guard while that officer or guard is on duty is capital murder.

A person commits an intentional murder of a law-enforcement officer or guard if he/she causes the death of: **[Read as appropriate]**

(1) a police officer,
(2) a sheriff,
(3) a deputy,
(4) a state trooper,
(5) a federal law-enforcement officer,
(6) any other state or federal peace officer of any kind,
(7) a prison guard, **(OR)**
(8) a jail guard

while such officer or guard is on duty, regardless of whether the defendant knew or should have known that the person was an officer or guard on duty, and, in performing the act or acts that cause the death of that person, he/she intends to kill that person (or another person).

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of a law-enforcement officer or guard:

(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 (name of deceased) was: **[Read as appropriate]**

(a) a police officer,
(b) a sheriff,
(c) a deputy,
(d) a state trooper,
(e) a federal law-enforcement officer,
(f) any other state or federal peace officer of any kind,

(g) a prison guard, **(OR)**
(h) a jail guard; **(AND)**

(5) That the murder took place while (name of deceased) was on duty.

In considering the elements of this offense, it is not necessary that the defendant knew or should have known that the victim was an officer or guard on duty. [13A-5-40(a)(5)]

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 law-enforcement officer or guard, 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 of a law-enforcement officer or guard, 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

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).

When an off-duty police officer witnesses a criminal offense or suspects criminal activity, the officer's status changes and, from that point on, he/she is considered to be acting in his/her capacity as a police officer and not in his/her capacity as a private citizen, i.e., he/she is considered to be "on duty." Johnson v. State, 823 So. 2d 1, 43 (Ala. Crim. App. 2001).