Ala. Code 1975, § 13A-5-40(a)(6)

MURDER COMMITTED WHILE UNDER LIFE SENTENCE

The defendant is charged with capital murder. The law states that an intentional murder committed while the defendant is under a sentence of life imprisonment is capital murder.

A person commits an intentional murder while under a sentence of life imprisonment 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) and, at the time of the murder, he/she was under a sentence of life imprisonment.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder while under a sentence of life imprisonment:

(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 murder was committed while the defendant was under a sentence of life imprisonment.

Under sentence of *life imprisonment* means while serving a term of life imprisonment imposed by the court specified in the indictment or while on **[Read as appropriate]:**

(1) parole,
(2) work release,
(3) furlough,
(4) escape, **(OR)**
(5) any other type of release or freedom while serving a term of life imprisonment imposed by the court specified in the indictment. [See 13A-5-39(7)]

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.

During the trial you heard evidence concerning whether the defendant was serving a life sentence at the time of the alleged murder in this case. The one and only reason you were permitted to hear that evidence is because one of the elements of the capital offense is being under sentence of life imprisonment at the time of the alleged murder(s) charged in this case. Evidence concerning whether the defendant was serving a sentence

of life imprisonment at the time of the alleged murder(s) was admitted only on that element of the capital offense, 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 serving a life sentence or may have been convicted of some crime that led to a life sentence as evidence that he/she did commit the alleged murder(s) with which he/she 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 been serving a life sentence or may have been convicted of a crime for which he/she received a life sentence.

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 while under a sentence of life imprisonment, 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 while under a sentence of life imprisonment, 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 life sentence 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 life sentence is admitted during the trial.

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).