

**Ala. Code 1975, § 13A-6-131**

**Domestic Violence Second Degree**  
**(Criminal Mischief I)**

The defendant is charged with domestic violence in the second degree.

A person commits the crime of domestic violence in the second degree if he/she commits the crime of criminal mischief I and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating relationship with the defendant.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) **[Insert the elements of Criminal Mischief I, 13A-7-21]; (AND)**
- (2) The victim **[Insert Victim's Name]** was **[Read as appropriate]**:
  - (a) a current or former spouse of the defendant;
  - (b) parent of the defendant;
  - (c) child of the defendant;
  - (d) a person with whom the defendant had a child in common;
  - (e) a present or former household member of the defendant; **(OR)**
  - (f) a person who has or had a dating relationship with the defendant.

**[Insert appropriate definitions and mens rea from Criminal Mischief I Instructions]**

*A dating relationship* is a significant relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement over a period of time and on a continuing basis during the course of the relationship. A dating relationship includes the period of engagement to be married. A dating relationship does not include a casual or business relationship or a relationship that ended more than 12 months prior to the filing of the petition for a protection order. **[13A-6-139.1 - definition effective January 1, 2016]**

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of domestic violence in the second degree, then you shall find the defendant guilty of domestic violence in the second degree.

If you find that the State has failed to prove any one or more of the elements of the offense of domestic violence in the second degree, then you cannot find the defendant guilty of domestic violence in the second degree.

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

**Use Notes**

Upon a claim of common-law marriage, it may be necessary to provide further instruction.

**[Insert Appropriate Use Notes From Criminal Mischief I Instructions.]**

[Approved 8-21-15.]