Ala. Code 1975, § 13A-6-131*

DOMESTIC VIOLENCE SECOND DEGREE
(Criminal Mischief First Degree)

*** [These instructions apply only to offenses committed on or after 09/01/2023]**

The defendant is charged with domestic violence second degree.

A person commits the crime of domestic violence second degree if he/she commits the crime of criminal mischief first degree and the victim is **[Read as appropriate]:** a current or former spouse, parent, step-parent, child, step-child, grandparent, step-grandparent, grandchild, step-grandchild, any person with whom the defendant had a child in common, a present 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 Elements of Criminal Mischief First Degree (13A-7-21)]**;

(2) The victim, **[Insert Name of Victim],** is: **[Read as appropriate]:**

A. The defendant's current or former spouse;
B. The defendant's parent;
C. The defendant's step-parent;
D. The defendant's child;
E. The defendant's step-child;
F. The defendant's grandparent;
G. The defendant's step-grandparent;
H. The defendant's grandchild;
I. The defendant's step-grandchild;
J. Any person with whom the defendant had a child in common;
K. A present household member; **(OR)**
L. A person who has or had a dating relationship with the defendant.

[Insert Appropriate Mens Rea and Definitions from Criminal Mischief First Degree Instructions.]

[Read as appropriate]: A *household member* excludes non-romantic or non-intimate co-residents. [13A-6-131(a)(2)]

[Read as appropriate]: A *dating relationship* means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party. [13A-6-131(a)(2)]

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

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

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

Use Notes

If there is evidence that the offense was committed in the presence of a child under the age of 14 years at the time of the offense, who is the victim's child or step-child, the defendant's child or step-child, or who is a child residing in or visiting the household of the victim or defendant, then the court should instruct the jury further that if the jury finds the defendant guilty, the jury shall also render a special verdict as to whether or not the defendant committed the act in the presence of a child. [13A-6-131(d)]

The court should instruct as follows:

> (1) If the jury finds the defendant guilty of domestic violence first degree, then the jury must next determine if the offense was committed in the presence of a child;
>
> (2) That child was under the age of 14 years at the time of the offense;
>
> (3) That child was the victim's child or step-child, the defendant's child or step-child, or was residing in or visiting the household of the victim or defendant;
>
> (4) *In the presence of a child* means that the child was in a position to see or hear the act. [13A-6-131(c)(2)]
>
> (5) The burden of proof is on the State of Alabama and must be proven beyond a reasonable doubt. **(AND)**
>
> (6) The jury must complete the special verdict form the Court has prepared in addition to the other form if the jury finds the defendant guilty of domestic violence first degree.

The court should prepare a special verdict form for the jury. The court shall make a written finding of fact, to be made part of the record upon conviction or adjudication, of whether or not the act was committed in the presence of a

child. [13A-6-131(d)]

Sentencing is also affected if the defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the first degree. [13A-6-131(c)(1)] No jury verdict is required by the statute.

[Approved 8/28/26]