

**Ala. Code 1975, § 13A-6-138**

**Domestic Violence by Strangulation or Suffocation**  
**(Effective January 1, 2016)**

The defendant is charged with domestic violence by strangulation or suffocation.

*A person commits the crime of domestic violence by strangulation or suffocation if he/she commits an assault with intent to cause physical harm or commits the crime of menacing, by strangulation or suffocation or attempted strangulation or suffocation against a victim.*

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

- (1) (a) The defendant committed an assault with intent to cause physical harm; **(OR)**
  - (b) The defendant committed the crime of menacing;
- (2) The defendant did so by strangulation or suffocation or attempted strangulation or suffocation; **(AND)**
- (3) The defendant did so against a victim.

**[If applicable, insert the elements of Menacing, 13A-6-23]**

*Strangulation* is intentionally causing asphyxia by closure or compression of the blood vessels or air passages of the neck as a result of external pressure on the neck. [13A-6-138(1)]

*Suffocation* is intentionally causing asphyxia by depriving a person of air or by preventing a person from breathing through the inhalation of toxic gases or by blocking or obstructing the airway of a person, by any means other than by strangulation. [13A-6-138(2)]

**[If applicable, insert the instruction on Attempt, 13A-4-2]**

A *victim* is an individual who is related to the defendant in any of these ways:  
**[Read all applicable]:**

- a. Is related by marriage, including a common law marriage;
- b. Had a former marriage or common law marriage;
- c. Had a child in common regardless of whether the victim and the

defendant had ever been married and regardless of whether they were currently residing or had in the past resided together in the same household;

- d. Had or have had a dating relationship;
- e. Was a current or former household member; A household member is a person maintaining or having maintained a living arrangement with the defendant where he/she is in, or was engaged in, a romantic or sexual relationship;
- f. A relative of a current or former household member who also lived with the defendant; A household member is a person maintaining or having maintained a living arrangement with the defendant where he/she is in, or was engaged in, a romantic or sexual relationship; **(OR)**
- g. An individual who was a parent, stepparent, child, or stepchild and who was in or has maintained a living arrangement with the defendant. [13A-6-139.1(3)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense, when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of domestic violence by strangulation or suffocation, then you shall find the defendant guilty of domestic violence by strangulation or suffocation.

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

**[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.

These instructions become effective January 1, 2016.

[Approved 8-21-15.]