

Ala. Code 1975, § 13A-6-2(a)(2)

Murder
(Extreme Indifference to Human Life)

The defendant is charged with murder.

A person commits the crime of murder if, under circumstances manifesting extreme indifference to human life, he/she recklessly engages in conduct which creates a grave risk of death to a person other than himself/herself, and thereby causes the death of another person.

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

- (1) A person, **[insert name of deceased]**, is dead;
- (2) The defendant caused the death of **[insert name of deceased]** by **[describe the act, such as shooting him/her]; (AND)**
- (3) Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct which created a grave risk of death to a person other than himself/herself.

[Read as appropriate]: A *person*, when referring to the victim, means a human being, including an unborn child in utero at any stage of development, regardless of viability. [13A-6-1(a)(3)]

A person acts with *extreme indifference* to human life if, under the circumstances, he/she recklessly engages in conduct which creates a grave risk of death to a person other than himself/herself.

Extreme indifference to human life means demonstrating extreme indifference to human life in general, but has no deliberate intent to kill or injure any particular individual. (See *Thomas v. State*, 517 So. 2d 640 (Ala. Crim. App. 1987).)

A person acts *recklessly* in regards to his/her conduct if:

- (1) The actor is aware that there is a substantial and unjustifiable risk that death will occur;
- (2) The risk of death is so great that the actor's failure to recognize this risk is a gross deviation from the standard of behavior to which a reasonable person would hold himself/herself in the same situation; **(AND)**

- (3) The actor consciously disregards this substantial and unjustifiable risk. [See 13A-2-2(3)]

[Read all appropriate - Intoxication]: A person who creates a risk, but is unaware that he/she has created that risk solely because of voluntary intoxication, acts recklessly with regards to that risk. *Intoxication* includes a disturbance of mental or physical capacities resulting from the introduction of any substance into the body. *Voluntary intoxication* means intoxication caused by substances that the actor knowingly introduced into his/her body, the tendency of which to cause intoxication he/she knows or ought to know, unless he/she introduces them under circumstances that would afford a defense to the charge. *Intoxication* in itself does not constitute mental disease or defect. *Intoxication* is generally not a defense. However, *involuntary intoxication* is a defense if as a result the actor lacks capacity either to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law. *Intoxication*, whether voluntary or involuntary, is admissible in evidence whenever it is relevant to negate an element of the offense charged. When recklessness establishes an element of an offense and the actor is unaware of a risk because of *voluntary intoxication*, his/her unawareness is immaterial in a prosecution for that offense. [13A-3-2]

A person who commits the crime of reckless murder is “determined to act no matter what the consequences to others;” this person demonstrates that he/she was “determined to follow a course of action that he/she knew, or should have known, would, in all probability” lead to the death of a person or persons. (*Woods v. State*, 602 So. 2d 1210, 1211 (Ala. Crim. App. 1992) (quoting *Napier v. State*, 357 So. 2d 1011, 1014 (Ala. 1984).)

The State is required to prove conduct that manifests an extreme indifference to human life and not to the life of any particular person. (See *Simmons v. State*, 649 So. 2d 1282 (Ala. 1994); *Sheffield v. State*, 87 So. 3d 607, 619 (Ala. Crim. App. 2010); *Ex parte Washington*, 448 So. 2d 404 (Ala. 1984).)

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

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

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

Use Notes

If the defendant allegedly intended to kill one person but is being charged with reckless murder because of other circumstances surrounding the case, you may wish to instruct the jury that “extreme indifference to human life” means demonstrating extreme

indifference to human life in general, not just extreme indifference to the life of a particular person or particular people. See *Thomas v. State*, 517 So. 2d 640 (Ala. Crim. App. 1987).

For unborn child exceptions see 13A-6-1(b) through (e).

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