

Ala. Code 1975, § 13A-6-20(a)(4)

Assault First Degree
(During the Commission of a Crime)

The defendant is charged with assault in the first degree.

A person commits the crime of assault in the first degree if, in the course of and in furtherance of the commission or attempted commission of: **[Read all appropriate]:**

- (A) Arson in the first degree;
- (B) Burglary in the first or second degree;
- (C) Escape in the first degree;
- (D) Kidnapping in the first degree;
- (E) Rape in the first degree;
- (F) Robbery in any degree;
- (G) Sodomy in the first degree; **(OR)**
- (H) Any other felony clearly dangerous to human life; **(OR)**
of immediate flight therefrom,

he/she causes a serious physical injury to another person.

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

- (1) The defendant caused a serious physical injury to a person, **[Insert name of injured person];**
- (2) The defendant did so in the course of and in furtherance of the commission or attempted commission of: **[Read all appropriate]:**
 - (1) Arson in the first degree;
 - (2) Burglary in the first or second degree;
 - (3) Escape in the first degree;
 - (4) Kidnapping in the first degree;
 - (5) Rape in the first degree;
 - (6) Robbery in any degree;
 - (7) Sodomy in the first degree; **(OR)**
 - (8) Any other felony clearly dangerous to human life; **(OR)**
- (3) The defendant did so of immediate flight therefrom.

[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)]

Serious physical injury is physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ. [13A-1-2(14)]

Physical injury is impairment of physical condition or substantial pain. [13A-1-2(12)]

[Read all appropriate]: To convict the defendant of assault in the first degree the State also must prove beyond a reasonable doubt that the defendant committed the crime of **[Insert name of a listed felony & insert appropriate instructions for the particular felony]** (OR) a felony that was clearly dangerous to human life, **[Insert name of a listed felony & insert appropriate instructions for the particular felony]**. [See Use Notes]

[Read as Appropriate]: A person attempts to commit a crime if, with intent to commit a specific offense, he/she does any overt act towards the commission of that offense. [13A-4-2]

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

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

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

Use Notes

In *Ex parte Mitchell*, 936 So.2d 1094 (Ala. Crim. App. 2006), the Court held that the trier of fact must consider the facts and circumstances of a particular case to determine if the felony was inherently dangerous in the manner and the circumstances in which it was committed.

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

[Approved 10-14-15.]