

Ala. Code 1975, § 13A-6-22(a)(3)

Assault Third Degree
(Negligence)

The defendant is charged with assault in the third degree.

A person commits the crime of assault in the third degree if, with criminal negligence, he/she causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

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

- (1) The defendant caused physical injury to another person, **[Insert name of injured person]**;
- (2) The defendant caused the injury by means of a deadly weapon or a dangerous instrument; **(AND)**
- (3) The defendant did so with criminal negligence.

[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)]

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

[Read as appropriate]: A *deadly weapon* is a firearm or anything manifestly designed, made, or adapted for the purposes of inflicting death or serious physical injury. The term includes, but is not limited to, a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any billy, black-jack, bludgeon, or metal knuckles. [13A-1-2(7)]

[Read as appropriate]: A *dangerous instrument* is any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is highly capable of causing death or serious physical injury. A dangerous instrument includes a vehicle. [13A-1-2(5)]

[Read as appropriate]: A *vehicle* is any propelled device in, upon, or by which any person or property is transported on land, water, or in the air and includes motor vehicles, motorcycles, motorboats, aircraft, and any vessel propelled by machinery, whether or not that machinery is the principal source of propulsion. [13A-1-2(15) & 13A-8-1(10)]

A person acts with *criminal negligence* with respect to a result or to a circumstance which is defined by statute as an offense when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. [13A-2-2(4)]

[Read as appropriate] You may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Read all appropriate statutes or ordinances].

[Read as appropriate]: The essential difference between “recklessness” as used in the murder and manslaughter statutes, and “criminal negligence” is that a reckless defendant is one who has “consciously disregarded” a substantial and unjustifiable risk, whereas a negligent actor is not aware of the risk but should have been aware of it. *Isom v. State*, 497 So. 2d 208, 211 (Ala. Crim. App. 1986).

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

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

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

Use Notes

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

[Approved 10-14-15.]