

Ala. Code 1975, § 13A-6-22(a)(4)

Assault Third Degree
(Peace Officer)

The defendant is charged with assault in the third degree.

A person commits the crime of assault in the third degree if, with intent to prevent a peace officer from performing a lawful duty, he/she causes physical injury to any person.

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]; (AND)**
- (2) The defendant did so with intent to prevent a peace officer from performing a lawful duty.

[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)]

A *peace officer* is a person duly sworn as a peace officer of the State of Alabama possessing powers of arrest and employed by the state, any political subdivision thereof, or any municipal corporation therein who is required by the terms of employment, whether the employment exists by virtue of election or appointment, to give full time to the preservation of public order and the protection of life or property or the detection of crime in the state. The term shall include enforcement officers for conservation laws, full-time coroners, and any pardon, parole, or probation officer, but shall not include any district attorney, assistant district attorney, assistant attorney general, commissioner, deputy commissioner, or any municipal inspector, county inspector, or state inspector. [36-21-60(11)]

[Read as appropriate]: A person who is a *peace officer* who is employed or under contract while off duty by a private or public entity is a peace officer performing a lawful duty when the person is working in his/her approved uniform while off duty with the approval of his/her employing law enforcement agency. [13A-6-21(a)(4)]

A person acts *intentionally* when it is his/her purpose to cause the death of another person. [13A-2-2(1)]

[Read as appropriate - Transferred Intent]: A person acts *intentionally* when it is his/her purpose to cause the death of a specific person, regardless of whether the

deceased person is actually the person whose death the defendant allegedly wished to cause. See *Ex parte Jackson*, 614 So. 2d 405, 406-407 (Ala. 1993); *Farrior v. State*, 728 So. 2d 691, 695-696 (Ala. Crim. App. 1998).

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.]