

Ala. Code 1975, 12-25-34.2

PRESUMPTIVE SENTENCING STANDARDS
(Aggravating Factors)

- I. [TO BE GIVEN IN ***NON-BIFURCATED*** TRIAL BEFORE GUILT DELIBERATION]
- A. If after consideration of the guilt of the defendant you find him/her guilty of any crime, you shall then consider whether the State has proven beyond a reasonable doubt the existence of an aggravating factor. [If you charge the jury as to any lesser included offense not covered by the presumptive sentencing guidelines, you may wish to ask the jury to return its verdict prior to proceeding to any penalty proceeding as that proceeding may no longer be necessary if the convicted offense is not covered by the presumptive guidelines.] An aggravating factor is a substantial and compelling reason that may justify an exceptional sentence that the court could impose.
- B. The State alleges the existence of this/these aggravating factor/s: **insert as appropriate**. You are to consider all the evidence you have heard to determine whether any aggravating factor exists. The State has the burden of proving beyond a reasonable doubt to each of you the existence of this/these aggravating factor[s] before you can find its existence. The phrase "reasonable doubt" means the same thing as I have previously defined. If, after considering all the evidence each and every one of you is convinced of the existence of any aggravating factor[s] beyond a reasonable doubt, then it will be your duty to find that an aggravating factor exists. However, if you have a reasonable doubt about its existence, you must find that the aggravating factor does not exist. You may find the existence of all, some or none of the aggravating factors I have listed. The jury must unanimously find that the same aggravating factor exists before there is a verdict. If the jury does not find the same aggravating factor exists, then the foreperson should circle "No" on the verdict form. This is true for each aggravating factor alleged.
- C. The evidence upon which a reasonable doubt about an aggravating factor may be based is the evidence you have heard during this trial. The defendant does not have to disprove anything about an aggravating factor. The burden is wholly upon the State to prove such a factor beyond a reasonable doubt. A reasonable doubt about an aggravating factor may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.
- D. In determining whether an aggravating factor exists, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict must be based solely upon the evidence and testimony you have seen and heard and the law on which I have instructed

you. You are not to concern yourselves with the sentence length or the disposition of the case as they are matters for the court.

- E. I will provide you with a Special Verdict Form. Complete this form only if you find the defendant guilty. There is a form for each possible aggravating factor.

[READ FORM AND PROVIDE IT TO JURY]

[SAMPLE: Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt the existence of the aggravating factor, insert as appropriate]?

Circle one: Yes No

Signature of Foreperson]

II. [TO BE GIVEN IN **BIFURCATED** TRIAL AFTER GUILT DETERMINATION]

A. INSTRUCTION BEFORE PENALTY PROCEEDING BEGINS

1. [TO BE GIVEN TO JURY THAT DECIDED GUILT]

Ladies and gentlemen of the jury, you have found the defendant guilty of insert charge of conviction. In this proceeding, you will not concern yourself with the question of guilt but rather with whether the State has proven beyond a reasonable doubt the existence of an aggravating factor. An aggravating factor is a substantial and compelling reason that may justify an exceptional sentence that the court could impose. You are to consider the evidence you have already heard in the guilt phase, as well as the evidence you are about to hear to determine whether any aggravating factor exists. At the conclusion of the taking of the evidence and after argument of counsel, you will be further instructed.

2. [TO BE GIVEN TO A JURY THAT DID **NOT** DECIDE GUILT]

Ladies and gentlemen of the jury, in a separate proceeding the defendant has been found guilty of insert charge of conviction. In this proceeding, you will not concern yourself with the question of guilt but rather with whether the State has proven beyond a reasonable doubt the existence of an aggravating factor. An aggravating factor is a substantial and compelling reason that may justify an exceptional sentence that the court could impose. You are to consider the evidence you are about to hear to determine whether

any aggravating factor exists. At the conclusion of the taking of the evidence and after argument of counsel, you will be further instructed.

B. INSTRUCTION AFTER CLOSING ARGUMENT

1. Ladies and gentlemen of the jury, it is now your duty to find whether any aggravating factor exists. An aggravating factor is a substantial and compelling reason that may justify an exceptional sentence that the court could impose.
2. The State alleges the existence of this/these aggravating factor/s: **[insert as appropriate]**. You are to consider all the evidence you have heard to determine whether any aggravating factor exists. The State has the burden of proving beyond a reasonable doubt to each of you the existence of this [these] aggravating factor[s] before you can find its existence. The phrase "reasonable doubt" means the same thing as I have previously defined. **[OR IF NEW JURY, INSERT DEFINITION OF REASONABLE DOUBT HERE.]** If, after considering all the evidence each and every one of you is convinced of the existence of any aggravating factor[s] beyond a reasonable doubt, then it will be your duty to find that an aggravating factor exists. However, if you have a reasonable doubt about its existence, you must find that aggravating factor does not exist. You may find the existence of all, some or none of the aggravating factors I have listed. The jury must unanimously find that the same aggravating factor exists before there is a verdict. If the jury does not find the same aggravating factor exists, then the foreperson should circle "No" on the verdict form. This is true for each aggravating factor alleged.
3. The evidence upon which a reasonable doubt about an aggravating factor may be based is the evidence you have heard during the trial and during this proceeding. **[OR IF NEW JURY– The evidence upon which a reasonable doubt about an aggravating factor may be based is the evidence you have heard during this proceeding.]** The defendant does not have to disprove anything about an aggravating factor. The burden is wholly upon the State to prove such a factor beyond a reasonable doubt. A reasonable doubt about an aggravating factor may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.]
4. In determining whether an aggravating factor exists, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict must be based solely upon the evidence and testimony you have seen and heard and the law on

which I have instructed you. You are not to concern yourselves with the sentence length or the disposition of the case as they are matters for the court.

5. I will provide you with a Special Verdict Form. There is a form for each possible aggravating factor.

[READ FORM AND PROVIDE IT TO JURY]

[SAMPLE: Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt the existence of the aggravating factor, insert as appropriate?

Circle one: Yes No

Signature of Foreperson]

[Adopted 05-09-14.]