

State of Alabama



Alabama Law Institute

Criminal Code

March 2017

ALABAMA LAW INSTITUTE

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March 2017

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Preface

There has not been a comprehensive review of the Alabama Criminal Code since it became effective on January 1, 1980. The Alabama Law Institute has undertaken such a review, and this bill represents an amendment of Chapters 1 through 6 of the Alabama Criminal Code to better achieve the purposes of the Criminal Code as set out in § 13A-1-3, Code of Alabama 1975; to better achieve clarity and consistency with subsequent legislation and State and Federal Supreme Court rulings; and to ensure that specific sections of the Criminal Code satisfy mandatory constitutional principles and requirements with special emphasis on achieving notice and fair warning of the nature of the proscribed conduct and the punishment authorized upon conviction and thereby ensuring public safety. The effected chapters are Chapter 1 - General Principles; Chapter 2 - Principles of Criminal Liability; Chapter 3 - Defenses; Chapter 4 - Inchoate Offenses (solicitation, attempt, conspiracy, and defenses); Chapter 5 - Punishments and Sentences (which includes but is not limited to the Classification of Offenses, Repeat and Habitual Offenders, and the Death Penalty and Life Without Parole); and Chapter 6 - Offenses Involving Danger to the Person (Homicide, Assaults, Kidnapping and related offenses, Sexual Offenses, Sexual Offenses involving School Employees and Students, Stalking, Transmitting Obscene Material To A Child and Solicitation Of Children By Electronic Means, Domestic Violence and Related Offenses, the Domestic Violence Protection Order Enforcement Act, Human Trafficking, the National Human Trafficking Resource center Hotline Notices, Protecting Alabama's Elders Act, and Bestiality).

Othni Lathram
Director
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TITLE 13A Criminal Code
CHAPTER 1 General Provisions

§ 13A-1-1. Title.

This title shall be known and may be cited as the “Alabama Criminal Code.”

§ 13A-1-2. Definitions.

Unless different meanings are expressly specified in subsequent provisions of this title, the following terms shall have the following meanings:

- (1) Booby trap.** —Any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person ~~making contact with the device~~. This term ~~includes~~ shall include but is not limited to improvised explosive devices, guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms. Also included are sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices for the production of toxic fumes or gases.
- (2) Burden of injecting the issue.** —The term means that the defendant must offer some competent evidence relating to all matters subject to the burden, except that the defendant may rely upon evidence presented by the prosecution in meeting the burden.
- (3) Clandestine laboratory operation.** —Any of the following:

 - a.** Purchase or procurement of chemicals, supplies, equipment, or laboratory location for the unlawful manufacture of controlled substances.
 - b.** Transportation or arranging for the transportation of chemicals, supplies, or equipment for the unlawful manufacture of controlled substances.

- c. Setting up of equipment or supplies in preparation for the unlawful manufacture of controlled substances.
 - d. Distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the unlawful manufacture of controlled substances.
- (4) **Crime.** —A misdemeanor or a felony.
- (5) **Dangerous instrument.** —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. The term includes a “vehicle,” as that term is defined in subdivision (15).
- (6) **Deadly physical force.** —Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- (7) **Deadly weapon.** —A firearm or ~~anything~~ any other instrument manifestly designed, made, ~~or~~ adapted, or used 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.
- (8) **Felony.** —An offense for which a sentence to a term of imprisonment in excess of one year ~~is authorized by this title~~ may be imposed.
- (9) Law Enforcement Officer. An officer, employee, or agent of the State of Alabama or any political subdivision thereof who has the power to arrest and is acting in his or her official capacity.
- ~~(9)~~(10) **Misdemeanor.** —An offense other than a violation for which a sentence to a term of imprisonment not in excess of one year may be imposed.

~~(10)~~**(11)** **Offense.** —Conduct for which a sentence to a term of imprisonment, or the death penalty, or to a fine is provided by any law of this state or by any law, ~~local law,~~ or ordinance of a political subdivision of this state.

~~(11)~~**(12)** **Person.** —A human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership or other legal entity, a government, or a governmental instrumentality.

~~(12)~~**(13)** **Physical injury.** —Impairment of physical condition or substantial pain.

~~(13)~~**(14)** **Possess.** —To have physical possession or otherwise to exercise dominion or control over tangible property.

~~(14)~~**(15)** **Serious physical injury.** —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.

~~(15)~~**(16)** **Vehicle.** —Any ~~“propelled vehicle,”~~ as defined in subdivision (9) of Section 13A-8-1. ~~The term includes any propelled device~~ by which any person or property is transported on land, water, or in the air, and includes motor vehicles, motorcycles, motorboats, and aircraft, and any vessel, whether propelled by machinery or not.

~~(16)~~**(17)** **Violation.** —~~An~~ A state offense for which a sentence to a term of imprisonment not in excess of 30 days may be imposed.

§ 13A-1-3. Purpose.

The general purposes of the provisions of this title are:

- (1) To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual and/or public interests;
- (2) To give fair warning of the nature of the conduct proscribed and of the punishment authorized upon conviction;
- (3) To define the act or omission and the accompanying mental state that constitute each offense;
- (4) To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;
- (5) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted and their confinement when required in the interests of public protection; and
- (6) To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

§ 13A-1-4. Act or omission as crime.

- (a) No act or omission is a crime unless made so by this title or by other applicable statute or ~~lawful~~ ordinance.
- (b) All common law offenses and affirmative defenses are abolished.

§ 13A-1-5. ~~Repealed.~~ Year-and-a-day Rule.

~~Repealed: Acts 1979, No. 79-471.~~

The common law year-and-a-day rule is expressly repealed. A prosecution may be instituted for murder, manslaughter, or unlawful homicide regardless of the time that has elapsed between the act or omission that caused the death of the victim and the victim's death.

§ 13A-1-6. Construction.

All provisions of this title shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law, including the purposes stated in Section 13A-1-3.

§ 13A-1-7. Applicability.

- (a) The provisions of this title shall govern the construction of and punishment for any offense defined in this title and committed after 12:01 A.M. January 1, 1980, as well as the construction and application of any defense to a prosecution for such an offense.
- (b) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this chapter shall govern the construction of and punishment for any offense defined outside this title and committed after the effective date thereof, as well as the construction and application of any defense to a prosecution for such an offense.
- (c) The provisions of this title do not apply to or govern the construction of and punishment for any offense committed prior to 12:01 A.M. January 1, 1980, or the construction and application of any defense to a prosecution of such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this title had not been enacted.

§ 13A-1-8. Scope of title — Civil actions — Multiple offenses from same conduct.

- (a)
 - (1) Except as otherwise provided herein, the procedure governing the accusation, prosecution, conviction and punishment of offenders and offenses is not regulated by this title.

- (2) This title does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this title.
- (b) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. ~~He~~The defendant may not, however, be convicted of more than one offense if:
 - (1) One offense is included in the other, as defined in Section 13A-1-9; or
 - (2) One offense consists only of a conspiracy or other form of preparation to commit the other; or
 - (3) Inconsistent findings of fact are required to establish the commission of the offenses; or
 - (4) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.

§ 13A-1-9. Included offenses.

- (a) A defendant may be convicted of an offense included in an offense charged. An offense is an included one if:
 - (1) It is established by proof of the same or fewer than all the facts required to establish the commission of the offense charged; or
 - (2) It consists of an attempt or solicitation to commit the offense charged or to commit a lesser included offense; or
 - (3) It is specifically designated by statute as a lesser degree of the offense charged; or
 - (4) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same

person, property or public interests, or a lesser kind of culpability suffices to establish its commission.

- (b) The court shall not charge the jury with respect to an included offense unless there is a rational basis for a verdict convicting the defendant of the included offense.

§ 13A-1-10. Saving clause.

All proceedings pending and all rights and liabilities existing, acquired or incurred on January 1, 1980 are hereby saved and may be consummated according to the law in force when they were commenced. This title shall not be construed to affect any prosecution pending or begun before January 1, 1980.

§ 13A-1-11. Effective date.

This title shall take effect at 12:01 A.M. o'clock on January 1, 1980.

§ ~~13A-5-56~~13A-1-12. Pattern indictment forms, verdict forms and jury instructions Supreme Court to promulgate indictment forms, verdict forms, and jury instructions.

The Alabama Supreme Court shall promulgate pattern indictment forms for use in cases in which indictments charging offenses defined in ~~Section 13A-5-40(a)~~ the Alabama Code are thereafter returned. The Alabama Supreme Court shall also promulgate pattern verdict forms and pattern jury instructions for the trial and sentencing aspects of cases tried thereafter under this article, insofar as such verdicts and instructions relate to the particularities of cases tried under this article.

TITLE 13A Criminal Code
CHAPTER 2 Principles of Criminal Liability
Article 1 Culpability

§ 13A-2-1. Definitions.

The following definitions apply to this Criminal Code:

- (1) **Act.** —A bodily movement, and such term includes possession of property.
- (2) **Voluntary act.** —An act performed consciously as a result of effort or determination, and such term includes the possession of property if the actor was aware of ~~his~~the actor's physical possession or control thereof for a sufficient time to have been able to terminate it.
- (3) **Omission.** —A failure to perform an act as to which a duty of performance is imposed by law.
- (4) **Conduct.** —An act or omission and its accompanying mental state.
- (5) **To act.** —Either to perform an act or to omit to perform an act.
- (6) **Culpable mental state.** —Such term means “intentionally” or “knowingly” or “recklessly” or with “criminal negligence,” as these terms are defined in Section 13A-2-2.

§ 13A-2-2. Definitions.

The following definitions apply to this Criminal Code:

- (1) **Intentionally.** —A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when ~~his~~the person's purpose is to cause that result or to engage in that conduct.
- (2) **Knowingly.** —A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when ~~he~~the person is aware that

his conduct is of that nature or that the circumstance exists.

- (3) **Recklessly.** —A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when ~~he~~the person is aware of and consciously disregards 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 disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in subdivision (e)(2) of Section 13A-3-2, acts recklessly with respect thereto.
- (4) **Criminal negligence.** —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~~the person 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. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence.

§ 13A-2-3. Minimum requirement for criminal liability — Strict liability — Mental culpability.

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he or she is physically capable of performing. If that conduct is all that is required for commission of a particular offense, or if an offense or some material element thereof does not require a culpable

mental state on the part of the actor, the offense is one of “strict liability.” If a culpable mental state on the part of the actor is required with respect to any material element of an offense, the offense is one of “mental culpability.”

§ 13A-2-4. Mental state.

- (a) When a statute defining an offense prescribes as an element thereof a specified culpable mental state, such mental state is presumed to apply to every element of the offense unless the context thereof indicates to the contrary.
- (b) Although no culpable mental state is expressly designated in a statute defining an offense, an appropriate culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, states a crime of mental culpability.
- (c) If a statute provides that criminal negligence suffices to establish an element of an offense, that element also is established if a person acts recklessly, knowingly or intentionally. If recklessness suffices to establish an element, that element also is established if a person acts knowingly and intentionally. If acting knowingly suffices to establish an element, that element also is established if a person acts intentionally.
- (d) When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly, or recklessly, or with criminal negligence with respect thereto.

§ 13A-2-5. Causation.

- (a) A person is criminally liable if the result would not have occurred but for ~~his~~ the person's conduct, operating either

alone or concurrently with another cause, unless the concurrent cause was sufficient to produce the result and the conduct of the actor clearly insufficient.

- (b) A person is nevertheless criminally liable for causing a result if the only difference between what actually occurred and what ~~he~~the person intended, contemplated or risked is that:
 - (1) A different person or property was injured, harmed or affected; or
 - (2) A less serious or less extensive injury or harm occurred.
- (c) When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

§ 13A-2-6. Mistake.

- (a) A person is not relieved of criminal liability for conduct because ~~he~~the person engages in that conduct under a mistaken belief of fact unless:
 - (1) ~~His~~The person's factual mistake negatives the culpable mental state required for the commission of an offense; or
 - (2) The statute defining the offense or a statute related thereto expressly provides that such a factual mistake constitutes a defense or exemption; or
 - (3) The factual mistake is of a kind that supports a defense of justification as defined in Article 2 of Chapter 3 of this title.
- (b) A person is not relieved of criminal liability for conduct because ~~he~~the person engages in that conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless ~~his~~the person's mistaken belief is founded upon an official statement of the law

contained in a statute or the latest judicial decision of the highest state or federal court which has decided on the matter.

- (c) The burden of injecting the issue of mistake of law under subsection (b) of this section is on the defendant, but this does not shift the burden of proof.
- (d) A mistake of law, other than as to the existence or meaning of the statute under which the defendant is prosecuted, is relevant to disprove the specific state of mental culpability required by the statute under which the defendant is prosecuted.

§ 13A-2-7. Consent to conduct.

- (a) ***In general.*** —The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives a required element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.
- (b) ***Consent to bodily harm.*** —When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense only if:
 - (1) The bodily harm consented to or threatened by the conduct consented to is not serious; or
 - (2) The conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - (3) The consent establishes a justification for the conduct under Article 2 of Chapter 3 of this title.
- (c) ***Ineffective consent.*** —Unless otherwise provided by this Criminal Code or by the law defining the offense, assent does not constitute consent if:
 - (1) It is given by a person who is legally incompetent to authorize the conduct; or

- (2) It is given by a person who by reason of immaturity, mental disease or defect, or intoxication is manifestly unable and known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct; or
- (3) It is given by a person whose consent is sought to be prevented by the law defining the offense; or
- (4) It is induced by force, duress or deception.

Article 2 Parties to Offenses

§ 13A-2-20. Generally.

A person is criminally liable for an offense if it is committed by his or her own behavior or by the behavior of another person for which he or she is legally accountable as provided for in this article, or both.

§ 13A-2-21. Accountability for behavior of another; generally.

A person is legally accountable for the behavior of another person if he or she is made accountable for the behavior of such person by the statute defining the offense or by specific provision of this title.

§ 13A-2-22. Accountability for behavior of another; innocent person's behavior.

- (a) A person is legally accountable for the behavior of another if, acting with the culpable mental state sufficient for the commission of the offense in question, he or she causes an innocent person to engage in such behavior.
- (b) As used in this section, an "innocent person" includes any person who is not guilty of the offense in question, despite his behavior, because of:

- (1) Criminal irresponsibility or other legal incapacity or exemption.
- (2) Unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose.
- (3) Any other factor precluding the mental state sufficient for the commission of the offense in question.

§ 13A-2-23. Accountability for behavior of another; accessory.

A person is legally accountable for the behavior of another constituting a criminal offense if, with the intent to promote or assist the commission of the offense:

- (1) ~~He~~The person procures, induces or causes such other person to commit the offense; or
- (2) ~~He~~The person aids or abets such other person in committing the offense; or
- (3) Having a legal duty to prevent the commission of the offense, ~~he~~the person fails to make an effort he or she is legally required to make.

§ 13A-2-24. Accountability for behavior of another; no accountability.

Unless otherwise provided by the statute defining the offense, a person shall not be legally accountable for behavior of another constituting a criminal offense if:

- (1) ~~He~~The person is a victim of that offense; or
- (2) The offense is so defined that ~~his~~the person's conduct is inevitably incidental to its commission; or
- (3) Prior to the commission of the offense, ~~he~~the person voluntarily terminated his or her effort to promote or assist its commission and either gave timely and adequate warning to law enforcement authorities, or to the intended victim, or wholly deprived his or her complicity of its effectiveness in the commission of the

offense. The burden of injecting this issue is on the defendant, but this does not shift the burden of proof.

§ 13A-2-25. Accountability for behavior of another; defenses.

In a prosecution for an offense in which criminal liability is based upon the behavior of another person pursuant to this article, it is no defense that:

- (1) Such other person has not been prosecuted for or convicted of any offense based upon the behavior in question, or has been previously acquitted thereof, or has been convicted of a different offense or degree of offense.
- (2) The defendant belongs to a class of persons who, by definition of the offense, are legally incapable of committing the offense in an individual capacity.

§ 13A-2-26. Corporate or entity conduct.

A person is criminally liable for conduct constituting an offense which ~~he~~the person performs or causes to be performed in the name of or in behalf of a corporation or entity to the same extent as if such conduct were performed in ~~his~~the person's own name or behalf.

§ 13A-2-27. Corporate or Entity Conduct, Definitions.

The following definitions shall apply to § 13A-2-26 through § 13A-2-30

- (1) “Agent” means a director, officer, employee, or other person authorized to act in behalf of a corporation or entity.
- (2) “High managerial agent” means:
 - (a) a partner in a partnership;
 - (b) an officer of a corporation or entity;

- (c) an agent of a corporation or entity who has duties of such responsibility that his or her conduct reasonably may be assumed to represent the policy of the corporation or entity.

§ 13A-2-28. Criminal Responsibility of Corporation or Entity.

- (1) If conduct constituting an offense is performed by an agent acting in behalf of a corporation or entity and within the scope of his or her office or employment, the corporation or entity is criminally responsible for an offense defined:
 - (a) in this code where a person is made subject thereto;
 - (b) by law other than this code in which a legislative purpose to impose criminal responsibility on corporations or entities plainly appears; or
 - (c) by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations or entities plainly appears.
- (2) A corporation or entity is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:
 - (a) a majority of the governing board acting in behalf of the corporation or entity; or
 - (b) a high managerial agent acting in behalf of the corporation or entity and within the scope of his or her office or employment.

§ 13A-2-29. Criminal Responsibility of Person for Conduct in Behalf of Corporation or Entity.

- (1) An individual is criminally responsible for conduct that he or she performs in the name of or in behalf of a corporation or entity to the same extent as if the

conduct were performed in his or her own name or behalf.

- (2) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation or entity is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on him or her.
- (3) If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation or entity, he or she is subject to the sentence authorized by law for an individual convicted of the offense.

§ 13A-2-30. Defense to Criminal Responsibility of Corporation or Entity.

- (1) It is an affirmative defense to prosecution of a corporation or entity under § 13A-2-28(1)(a) or (2)(a) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.
- (2) It is not a defense to prosecution of a corporation or entity that the crime is one of violence or one involving a specific intent.

TITLE 13A Criminal Code
CHAPTER 3 Defenses
Article 1 Responsibility

§ 13A-3-1. ~~Insanity defense~~ Mental disease or Defect.

- (a) It is an affirmative defense to a prosecution for any crime that, at the time of the commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense.
- (b) “Severe mental disease or defect” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
- (c) The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

§ 13A-3-2. Intoxication.

- (a) Intoxication is not a defense to a criminal charge, except as provided in subsection (c) of this section. However, intoxication, whether voluntary or involuntary, is admissible in evidence whenever it is relevant to negate an element of the offense charged.
- (b) When recklessness establishes an element of an offense and the actor is unaware of a risk because of voluntary intoxication, his or her unawareness is immaterial in a prosecution for that offense.
- (c) Involuntary intoxication is a defense to prosecution if as a result the actor lacks capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.
- (d) Intoxication in itself does not constitute mental disease or defect within the meaning of Section 13A-3-1.
- (e) In this section:

- (1) “Intoxication” includes a disturbance of mental or physical capacities resulting from the introduction of any substance into the body.
- (2) “Voluntary intoxication” means intoxication caused by substances that the actor knowingly introduced into his or her body, the tendency of which to cause intoxication he or she knows or ought to know, unless he or she introduces them under circumstances that would afford a defense to a charge of crime.

§ 13A-3-3. Age of accused.

The prosecution of any person as an adult shall be barred if the offense was committed when the actor was less than 14 years old.

Article 2 Justification and Excuse

§ 13A-3-20. Definitions.

The following definitions are applicable to this article:

- (1) **Building.** —Any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, aircraft, or watercraft used for the lodging of persons or carrying on business therein. Each unit of a building consisting of two or more units separately occupied or secured is a separate building.
- (2) **Deadly physical force.** —Force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- (3) **Dwelling.** —A building which is usually occupied by a person lodging therein at night, or a building of any kind, including any attached balcony, whether the building is temporary or permanent, mobile or immobile, which has a roof over it, and is designed to be occupied by people lodging therein at night.

- (4) **Force.** —Physical action or threat against another, including confinement.
- (5) **Premises.** —The term includes any building, as defined in this section, and any real property.
- (6) **Residence.** —A dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.
- (7) **Vehicle.** —A motorized conveyance which is designed to transport people or property.

§ 13A-3-21. Generally — Danger to innocent persons — Civil remedy unimpaired.

- (a) **Defense.** —Except as otherwise expressly provided, justification or excuse under this article is a defense.
- (b) **Danger to innocent persons.** —If a person is justified or excused in using force against a person, but he or she recklessly or negligently injures or creates a substantial injury to another person, the justifications afforded by this article are unavailable in a prosecution for such recklessness or negligence.
- (c) **Civil remedy unimpaired.** —Any justification or excuse within the meaning of this article does not abolish or impair any civil remedy or right of action which is otherwise available.

§ 13A-3-22. Legally authorized actions — Public servants' official powers and duties.

Unless inconsistent with other provisions of this article, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his or her official powers, duties or functions.

§ 13A-3-23. Self-defense — Defense of others.

- (a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (5), if the person reasonably believes that another person is:
- (1) Using or about to use unlawful deadly physical force.
 - (2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling.
 - (3) Committing or about to commit a kidnapping in any degree, assault in the first or second degree, burglary in any degree, robbery in any degree, or forcible rape,~~or forcible sodomy.~~
 - (4) Using or about to use physical force against an owner, employee, or other person authorized to be on business property when the business is closed to the public while committing or attempting to commit a crime involving death, serious physical injury, robbery, kidnapping, rape, ~~sodomy,~~ or a crime of a sexual nature involving a child under the age of 12.
 - (5) In the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered, a dwelling, residence, business property, or occupied vehicle, or federally licensed nuclear power facility, or is in the process of sabotaging or attempting to sabotage a federally licensed nuclear power facility, or is attempting to remove, or has forcefully removed, a person against his or her will from any dwelling,

residence, business property, or occupied vehicle when the person has a legal right to be there, and provided that the person using the deadly physical force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring. The legal presumption that a person using deadly physical force is justified to do so pursuant to this subdivision does not apply if:

- a.** The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;
 - b.** The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;
 - c.** The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
 - d.** The person against whom the defensive force is used is a law enforcement officer acting in the performance of his or her official duties.
- (b)** A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground.
- (c)** Notwithstanding the provisions of subsection (a), a person is not justified in using physical force if:

- (1) With intent to cause physical injury or death to another person, he or she provoked the use of unlawful physical force by such other person.
- (2) He or she was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force.
- (3) The physical force involved was the product of a combat by agreement not specifically authorized by law.

(d)

- (1) A person who uses force, including deadly physical force, as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.
- (2) Prior to the commencement of a trial in a case in which a defense is claimed under this section, the court having jurisdiction over the case, upon motion of the defendant, shall conduct a pretrial hearing to determine whether force, including deadly force, used by the defendant was justified or whether it was unlawful under this section. During any pretrial hearing to determine immunity, the defendant must show by a preponderance of the evidence that he or she is immune from criminal prosecution.
- (3) If, after a pretrial hearing under subdivision (2), the court concludes that the defendant has proven by a preponderance of the evidence that force, including deadly force, was justified, the court shall enter an order finding the defendant immune from criminal prosecution and dismissing the criminal charges.

- (4) If the defendant does not meet his or her burden of proving immunity at the pre-trial hearing, he or she may continue to pursue the defense of self-defense or defense of another person at trial. Once the issue of self-defense or defense of another person has been raised by the defendant, the state continues to bear the burden of proving beyond a reasonable doubt all of the elements of the charged conduct.
- (e) A law enforcement agency may use standard procedures for investigating the use of force described in subsection (a), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force used was unlawful.

§ 13A-3-24. Discipline and maintaining order — Suicide prevention — Medical treatment.

The use of force upon another person is justified under any of the following circumstances:

- (1) A parent, guardian or other person responsible for the care and supervision of a minor or an incompetent person, and a teacher or other person responsible for the care and supervision of a minor for a special purpose, may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent that he or she reasonably believes it necessary and appropriate to maintain discipline or to promote the welfare of the minor or incompetent person.
- (2) A warden or other authorized official of a jail, prison or correctional institution may, in order to maintain order and discipline, use whatever physical force is authorized by law.
- (3) A person responsible for the maintenance of order in a common or contract carrier of passengers, or a person acting under ~~his~~that person's direction, may use reasonable physical force when and to the extent that

he or she reasonably believes it necessary to maintain order, but he or she may use deadly physical force only when he or she reasonably believes it necessary to prevent death or serious physical injury.

- (4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon ~~himself~~ that other person may use reasonable physical force upon that person to the extent that ~~he~~ the person reasonably believes it necessary to thwart the result.
- (5) A duly licensed physician, or a person acting under ~~his~~ the physician's direction, may use reasonable physical force for the purpose of administering a reasonable and recognized form of treatment which he or she reasonably believes to be adapted to promoting the physical or mental health of the patient if:
 - a. The treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his or her parent, guardian or other person responsible for his or her care and supervision; or
 - b. The treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

§ 13A-3-25. Defense of property; trespass.

- (a) A person in lawful possession or control of premises, as defined in Section 13A-3-20, or a person who is licensed or privileged to be thereon, may use physical force upon another person when and to the extent that he or she reasonably believes it necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon such premises.

(b) A person may use deadly physical force under the circumstances set forth in subsection (a) of this section only:

- (1) In defense of a person, as provided in Section 13A-3-23; or
- (2) When he or she reasonably believes it necessary to prevent the commission of arson in the first or second degree by the trespasser.

§ 13A-3-26. Defense of property; theft or criminal mischief.

A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief with respect to property other than premises as defined in section 13A-3-20.

§ 13A-3-27. Arrest — Escape prevention — ~~Peace officers~~ Law enforcement officers.

(a) A ~~peace officer~~ law enforcement officer is justified in using that degree of physical force which ~~he~~ the law enforcement officer reasonably believes to be necessary, upon a person in order:

- (1) To make an arrest for a misdemeanor, violation or violation of a criminal ordinance, or to prevent the escape from custody of a person arrested for a misdemeanor, violation or violation of a criminal ordinance, unless the ~~peace officer~~ law enforcement officer knows that the arrest is unauthorized; or
- (2) To defend ~~himself~~ the law enforcement officer or a third person from what ~~he~~ the law enforcement officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest for a misdemeanor, violation or violation of a

criminal ordinance, or while preventing or attempting to prevent an escape from custody of a person who has been legally arrested for a misdemeanor, violation or violation of a criminal ordinance.

- (b) A ~~peace officer~~law enforcement officer is justified in using deadly physical force upon another person when and to the extent that ~~he~~the law enforcement officer reasonably believes it necessary in order:
- ~~(1) To make an arrest for a felony or to prevent the escape from custody of a person arrested for a felony, unless the officer knows that the arrest is unauthorized; or~~
 - ~~(2) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.~~
 - (1) To defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force; or
 - (2) To effect an arrest, or to prevent the escape from custody, of a person whom the law enforcement officer reasonably believes:
 - a. has committed or attempted to commit a felony involving the use or threatened use of deadly weapon or dangerous instrument; or
 - b. is attempting to escape by the use of a deadly weapon or dangerous instrument; or
 - c. is likely to endanger human life or to inflict serious physical injury to another by the use of a deadly weapon or dangerous instrument unless apprehended immediately.
- (c) Nothing in subdivision (a)(1), or (b)(1), or (f)(2) constitutes justification for reckless or criminally negligent conduct by a ~~peace officer~~law enforcement officer amounting to an offense against or with respect to persons being arrested or to innocent persons whom ~~he~~the law

enforcement officer is not seeking to arrest or retain in custody.

- (d) A ~~peace officer~~law enforcement officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (a) and (b) unless the warrant is invalid and is known by the officer to be invalid.
- (e) Except as provided in subsection (f), a person who has been directed by a ~~peace officer~~law enforcement officer to assist ~~him~~the law enforcement officer to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he or she reasonably believes that force to be necessary to carry out the ~~peace officer's~~law enforcement officer's direction.
- (f) A person who has been directed to assist a ~~peace officer~~law enforcement officer under circumstances specified in subsection (e) may use deadly physical force to effect an arrest or to prevent an escape only when:
 - (1) ~~He~~The person reasonably believes that force to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force; or
 - (2) ~~He~~The person is authorized by the ~~peace officer~~law enforcement officer to use deadly physical force and does not know that the ~~peace officer~~law enforcement officer ~~himself~~ is not authorized to use deadly physical force under the circumstances.
- (g) A private person acting on his or her own account is justified in using physical force upon another person when and to the extent that ~~he~~the private person reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom ~~he~~the private person reasonably believes has committed a felony and who in fact has committed that felony, but ~~he~~the private person is justified in using deadly physical force for the purpose only when ~~he~~the private person reasonably

believes it necessary to defend himself or a third person from what ~~he~~the private person reasonably believes to be the use or imminent use of deadly physical force.

(h) A guard or ~~peace officer~~law enforcement officer employed in a detention facility is justified:

~~(1) In using deadly physical force when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner accused or convicted of a felony from any detention facility, or from armed escort or guard;~~

(1) In using deadly physical force upon another person when and to the extent that the guard or law enforcement officer reasonably believes it necessary in order:

a. to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force; or

b. to effect an arrest, or to prevent the escape from custody, of a person whom the guard or law enforcement officer reasonably believes:

i. has escaped or is attempting to escape by the use or threatened use of a deadly weapon or dangerous instrument;

ii. is likely to endanger human life or to inflict serious physical injury to another by the use of a deadly weapon or dangerous instrument unless apprehended immediately.

(2) In using physical force, but not deadly physical force, in all other circumstances when and to extent that ~~he~~the guard or law enforcement officer reasonably believes it necessary to prevent what he or she reasonably believes to be the escape of a prisoner from a detention facility.

(3) “Detention facility” means any place used for the confinement, pursuant to law, of a person:

- a. Charged with or convicted of an offense; or
- b. Charged with being or adjudicated a youthful offender, a neglected minor or juvenile delinquent; or
- c. Held for extradition; or
- d. Otherwise confined pursuant to an order of a criminal court.

§ 13A-3-28. Resisting arrest.

A person may not use physical force to resist a lawful arrest by a ~~peace officer~~law enforcement officer who is known or reasonably appears to be a ~~peace officer~~law enforcement officer.

§ 13A-3-29. ~~[Repealed.]~~Justification: Necessity

~~Repealed: Acts 1979, No. 79-664.~~

Unless inconsistent with other provisions of this chapter, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when:

- (a) Such conduct is necessary as an emergency measure to avoid imminent harm to the actor or another; and
- (b) The desirability and urgency of avoiding such harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and
- (c) The actor was not reckless, negligent or at fault in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for the actor's conduct; and
- (d) A legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

§ 13A-3-30. Duress.

- (a) It is a defense to prosecution that the actor engaged in the proscribed conduct because ~~he~~ the actor was compelled to do so by the threat of imminent death or serious physical injury to ~~himself~~ the actor or another.
- (b) The defense provided by this section is unavailable if the actor intentionally or recklessly placed ~~himself~~ the actor in a situation in which it was probable that ~~he~~ the actor would be subjected to duress. The defense is also unavailable if ~~he~~ the actor was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.
- (c) It is no defense that a person acted at the command or persuasion of his or her spouse, unless such compulsion would establish a defense under this section. The presumption that a woman is subject to compulsion when acting in the presence of her husband is abolished.
- (d) The defense provided by this section is unavailable in a prosecution for:
 - (1) murder; or
 - (2) any killing of another under aggravated circumstances, as provided by Article 2 of Chapter 5 of this title.

§ 13A-3-31. Entrapment.

~~The Alabama Criminal Code adopts the present case law on entrapment.~~

- (a) It is a defense to prosecution if the actor engaged in the proscribed conduct was entrapped as provided in this section.
- (b) Entrapment occurs when a state officer or person under the officer's control incites, induces, lures, or instigates a person into committing a criminal offense which that person would not have otherwise committed and had no intention of committing. Conduct merely affording a

person an opportunity to commit an offense does not constitute entrapment.

- (c) To raise the defense, a defendant must initially present evidence that the government conduct created a substantial risk that the offense would be committed by a person other than one ready to commit it.
- (d) The defense of entrapment is unavailable when causing or threatening bodily injury is an element of the offense charged.
- (e) A person prosecuted for an offense shall be acquitted if he or she proves by a preponderance of evidence that he or she was entrapped. The issue of entrapment shall be presented to the trier of fact.

TITLE 13A Criminal Code
CHAPTER 4 Inchoate Crimes

§ 13A-4-1. Criminal solicitation.

- (a) A person is guilty of criminal solicitation if, with the intent that another person engage in conduct constituting a crime, ~~he~~ the person solicits, requests, commands or importunes such other person to engage in such conduct.

A person may not be convicted of criminal solicitation upon the uncorroborated testimony of the person allegedly solicited, and there must be proof of circumstances corroborating both the solicitation and the defendant's intent.

- (b) A person is not liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his the person's criminal intent, ~~he~~ the person (1) notified the person solicited of his or her renunciation and (2) gave timely and adequate warning to the law enforcement authorities or otherwise made a substantial effort to prevent the commission of the criminal conduct solicited. The burden of injecting this issue is on the defendant, but this does not shift the burden of proof.
- (c) A person is not liable under this section when ~~his~~ the person's solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the offense solicited. When the solicitation constitutes an offense other than criminal solicitation which is related to but separate from the offense solicited, defendant is guilty of such related offense only and not of criminal solicitation.
- (d) It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the offense solicited because of:
- (1) Criminal irresponsibility or other legal incapacity or exemption; or
 - (2) Unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose; or

- (3) Any other factor precluding the mental state required for the commission of the offense in question.
- (e) It is no defense to a prosecution for criminal solicitation that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the offense that ~~he~~ the defendant solicited another to commit.
- (f) Criminal solicitation is a:
 - (1) Class A felony if the offense solicited is murder.
 - (2) Class B felony if the offense solicited is a Class A felony.
 - (3) Class C felony if the offense solicited is a Class B felony.
 - ~~(4)~~ (5) Class D felony if the offense is a Class C felony.
 - ~~(4)~~ (5) Class A misdemeanor if the offense solicited is a Class ~~D~~ felony.
 - ~~(5)~~ (6) Class B misdemeanor if the offense solicited is a Class A misdemeanor.
 - ~~(6)~~ (7) Class C misdemeanor if the offense solicited is a Class B misdemeanor.
 - ~~(7)~~ (8) Violation if the offense solicited is a Class C misdemeanor.

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§ 13A-4-2. Attempt.

- (a) A person is guilty of an attempt to commit a crime if, with the intent to commit a specific offense, ~~he~~ the person does any overt act towards the commission of such offense.
- (b) It is no defense under this section that the offense charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such offense could have been committed

had the attendant circumstances been as the defendant believed them to be.

(c) A person is not liable under this section if, under circumstances manifesting a voluntary and complete renunciation of this criminal intent, ~~he~~the person avoided the commission of the offense attempted by abandoning ~~his~~ the person's criminal effort and, if mere abandonment is insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof. The burden of injecting this issue is on the defendant, but this does not shift the burden of proof.

(d) An attempt is a:

(1) Class A felony if the offense attempted is murder.

(2) Class B felony if the offense attempted is a Class A felony.

(3) Class C felony if the offense attempted is a Class B felony.

(4) Class D felony if the offense attempted is a Class C felony.

~~(4)~~ (5) Class A misdemeanor if the offense attempted is a Class ~~C~~D felony.

~~(5)~~ (6) Class B misdemeanor if the offense attempted is a Class A misdemeanor.

~~(6)~~ (7) Class C misdemeanor if the offense attempted is a Class B misdemeanor.

~~(7)~~ (8) Violation if the offense attempted is a Class C misdemeanor.

§ 13A-4-3. Criminal conspiracy; generally.

(a) A person is guilty of criminal conspiracy if, with the intent that conduct constituting an offense be performed, ~~he~~the person agrees with one or more persons to engage in or cause the performance of such conduct, and any one or

more of such persons does an overt act to effect an objective of the agreement.

- (b) If a person knows or should know that one with whom ~~he~~ the person agrees has in turn agreed or will agree with another to effect the same criminal objective, ~~he~~ the person shall be deemed to have agreed with such other person, whether or not ~~he~~ the person knows the other's identity.
- (c) A person is not liable under this section if, under circumstances manifesting a voluntary and complete renunciation of ~~his~~ the person's criminal purpose, ~~he~~ the person gave a timely and adequate warning to law enforcement authorities or made a substantial effort to prevent the enforcement of the criminal conduct contemplated by the conspiracy. Renunciation by one conspirator, however, does not affect the liability of another conspirator who does not join in the abandonment of the conspiratorial objective. The burden of injecting the issue of renunciation is on the defendant, but this does not shift the burden of proof.
- (d) It is no defense to a prosecution for criminal conspiracy that:
 - (1) The person, or persons, with whom defendant is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or is immune from prosecution, or
 - (2) The person, or persons, with whom defendant conspired could not be guilty of the conspiracy or the object crime because of lack of mental responsibility or culpability, or other legal incapacity or defense, or
 - (3) The defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the offense that is the object of the conspiracy.
- (e) A conspirator is not liable under this section if, had the criminal conduct contemplated by the conspiracy actually

been performed, ~~he~~the conspirator would be immune from liability under the law defining the offense or as an accomplice under Section 13A-2-24.

(f) ***Liability as accomplice.*** —Accomplice liability for offenses committed in furtherance of a conspiracy is to be determined as provided in Section 13A-2-23.

(g) Criminal conspiracy is a:

(1) Class A felony if an object of the conspiracy is murder.

(2) Class B felony if an object of the conspiracy is a Class A felony.

(3) Class C felony if an object of the conspiracy is a Class B felony.

(4) Class D felony if an object of the conspiracy is a Class C felony

~~(4)~~ (5) Class A misdemeanor if an object of the conspiracy is a Class ~~D~~ felony.

~~(5)~~ (6) Class B misdemeanor if an object of the conspiracy is a Class A misdemeanor.

~~(6)~~ (7) Class C misdemeanor if an object of the conspiracy is a Class B misdemeanor.

~~(7)~~ (8) Violation if an object of the conspiracy is a Class C misdemeanor.

§ 13A-4-4. Criminal conspiracy; formed in state to do out-of-state act.

A conspiracy formed in this state to do an act beyond the state, which, if done in this state, would be a criminal offense, is indictable and punishable in this state in all respects as if such conspiracy had been to do such act in this state.

§ 13A-4-5. Defenses — Multiple convictions for single course of conduct.

- (a) It is no defense to a prosecution for criminal solicitation, Section 13A-4-1, attempt, Section 13A-4-2, or criminal conspiracy, Section 13A-4-3, that the offense solicited, attempted or conspired was actually committed.
- (b) A person may not be convicted on the basis of the same course of conduct of both the actual commission of an offense and:
 - (1) An attempt to commit the offense; or
 - (2) Criminal solicitation of the offense; or
 - (3) Criminal conspiracy of the offense.
- (c) A person may not be convicted of more than one of the offenses defined in Sections 13A-4-1, 13A-4-2 and 13A-4-3 for a single course of conduct designed to commit or to cause the commission of the same crime.

§ 13A-4-6. Criminal Facilitation.

- (a) A person is guilty of criminal facilitation if, acting with knowledge that another person is committing or intends to commit an offense, he or she knowingly provides the other person with means or opportunity for the commission of the offense.
- (b) Criminal facilitation is a:
 - (1) Class A felony if an object of the ~~facilitation~~ offense facilitated is murder.
 - (2) Class B felony if the offense facilitated is a Class A felony.
 - (3) Class C felony if the offense facilitated is a Class B felony.
 - (4) Class D felony if the offense facilitated is a Class C felony.

- (5) Class A misdemeanor if the offense facilitated is a Class D Felony.
- (6) Class B misdemeanor if the offense facilitated is a Class C misdemeanor.

TITLE 13A Criminal Code
CHAPTER 5 Punishments and Sentences
Article 1 General Provisions

§ 13A-5-1. Applicability — Classification of offenses.

- (a) Every person convicted of any offense defined in this title, or defined outside this title, shall be sentenced by the court in accordance with this article, unless otherwise specifically provided by law.
- (b) Penal laws enacted after January 1, 1980 shall be classified for punishment purposes in accordance with this article.

§ 13A-5-2. Penalties permitted or required.

- (a) Every person convicted of a felony shall be sentenced by the court to imprisonment for a term authorized by Sections 13A-5-6, 13A-5-9, and 13A-5-10.
- (b) In addition to imprisonment, every person convicted of a felony may be sentenced by the court to pay a fine authorized by Section 13A-5-11.
- (c) Every person convicted of a misdemeanor or violation shall be sentenced by the court to:
 - (1) Imprisonment for a term authorized by Section 13A-5-7; or
 - (2) Pay a fine authorized by Section 13A-5-12; or
 - (3) Both such imprisonment and fine.
- (d) Every person convicted of a felony, misdemeanor, or violation, except for the commission of a sex offense involving a child as defined in Section 15-20A-4(26), may be placed on probation as authorized by law.
- (e) This article does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other lawful civil penalty. Such a judgment, order, or decree may be included as part of the sentence.
- (f) Every person convicted of murder shall be sentenced by the court to imprisonment for a term, or to death, or to life imprisonment without parole, ~~or life imprisonment in the case of a defendant who establishes that he or she was~~

under the age of 18 years at the time of the offense, as authorized by subsection (c) of Section 13A-6-2. In the case of a defendant convicted of capital murder who proves by a preponderance of the evidence that he or she was under the age of 18 years at the time of the offense, he or she shall be sentenced by the court to either life imprisonment without parole or to life imprisonment, as authorized by subsection (c) of Section 13A-6-2.

§ 13A-5-3. Classification of offenses; generally.

- (a) Offenses are designated as felonies, misdemeanors or violations.
- (b) Felonies are classified according to the relative seriousness of the offense into four categories:
 - (1) Class A felonies;
 - (2) Class B felonies;
 - (3) Class C felonies ; and
 - (4) Class D felonies.
- (c) Misdemeanors are classified according to the relative seriousness of the offense into three categories:
 - (1) Class A misdemeanors;
 - (2) Class B misdemeanors; and
 - (3) Class C misdemeanors.
- (d) Violations are not classified.

§ 13A-5-4. Classification of offenses; designation.

- (a) The particular classification of each felony defined in this title, except murder under Section 13A-6-2, is expressly designated in the chapter or article defining it. Any offense defined outside this title which is declared by law to be a felony without specification of its classification or punishment is punishable as a Class C felony.
- (b) The particular classification of each misdemeanor defined in this title is expressly designated in the chapter or article defining it. Any offense defined outside this title which is declared by law to be a misdemeanor without specification as to classification or punishment is punishable as a Class C misdemeanor.

- (c) Every violation defined in this title is expressly designated as such. Any offense defined outside this title without specification as to punishment or as to felony or misdemeanor is a violation.

§ 13A-5-5. Presentence investigation reports.

There shall be a presentence or postsentence investigation report completed and filed on every defendant convicted of a felony offense after March 10, 2006, and such report shall be in an electronic format. On motion of the court or written motion of either party, the court shall require a written report of a presentence investigation of a defendant convicted of a felony, and such defendant shall not be sentenced or otherwise disposed of before such report has been presented to and considered by the court.

§ 13A-5-6. Prison terms; felonies.

- (a) Sentences for felonies shall be for a definite term of imprisonment, which imprisonment includes hard labor, within the following limitations:
 - (1) For a Class A felony, ~~for~~ life or not more than 99 years or less than 10 years.
 - (2) For a Class B felony, not more than 20 years or less than 2 years.
 - (3) For a Class C felony, not more than 10 years or less than 1 year and 1 day, ~~and~~ A Class C felony must be sentenced either in accordance with subsection (b) of Section 15-18-8 unless sentencing is or pursuant to Section 13A-5-9, unless sentenced as a part of a sentencing event, as defined in Section 12-25-32, involving a Class A or Class B felony.
 - (4) For a Class D felony, not more than 5 years or less than 1 year and 1 day, ~~and~~ A Class D felony must be sentenced in accordance with subsection (b) of Section 15-18-8, unless sentenced as part of a sentencing event, as defined in Section 12-25-32, involving a Class A, Class B, or Class C felony.

- (5) For a Class A felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, or a Class A felony sex offense involving a child as defined in Section 15-20A-4(26), not less than 20 years.
- (6) For a Class B or C felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, or a Class B felony sex offense involving a child as defined in Section 15-20A-4(26), not less than 10 years.
- (b) The actual time of release within the limitations established by subsection (a) of this section shall be determined under procedures established elsewhere by law.
- (c) In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20A-19, or where an offender is convicted of a Class A felony sex offense involving a child as defined in Section 15-20A-4(26), and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant's release from incarceration.
- (d) In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is convicted of a sex offense pursuant to Section 13A-6-61, ~~13A-6-63~~, or ~~13A-6-65-164~~, when the defendant was 21 years of age or older and the victim was six years of age or less at the time the offense was committed, the defendant shall be sentenced to life imprisonment without the possibility of parole.

§ 13A-5-7. Prison terms; misdemeanors and violations.

- (a) Sentences for misdemeanors shall be a definite term of imprisonment in the county jail or to hard labor for the county, within the following limitations:
 - (1) For a Class A misdemeanor, not more than one year.

- (2) For a Class B misdemeanor, not more than six months.
- (3) For a Class C misdemeanor, not more than three months.
- (b) Sentences for violations shall be for a definite term of imprisonment in the county jail, not to exceed 30 days.

§ 13A-5-8. Place of imprisonment.

The place of imprisonment for sentences imposed in this state shall be as established elsewhere by law.

§ 13A-5-9. Repeat or habitual offenders; generally.

- (a) In all cases when it is shown that a criminal defendant has been previously convicted of a Class A, Class B, or Class C felony and after the conviction has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:
 - (1) On conviction of a Class C felony, he or she must be punished for a Class B felony.
 - (2) On conviction of a Class B felony, he or she must be punished for a Class A felony.
 - (3) On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.
- (b) In all cases when it is shown that a criminal defendant has been previously convicted of any two felonies that are Class A, Class B, or Class C felonies and after such convictions has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:
 - (1) On conviction of a Class C felony, he or she must be punished for a Class A felony.
 - (2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.
 - (3) On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not less than 99 years.
- (c) In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies that are

Class A, Class B, or Class C felonies and after such convictions has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:

- (1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.
- (2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or any term of not less than 20 years.
- (3) On conviction of a Class A felony, where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court.
- (4) On conviction of a Class A felony, where the defendant has one or more prior convictions for any Class A felony, he or she must be punished by imprisonment for life without the possibility of parole.
- (d) In all cases when it is shown that a criminal defendant has been previously convicted of any two or more felonies that are Class A or Class B felonies and after such convictions has committed a Class D felony, upon conviction, he or she must be punished for a Class C felony.
- (e) In all cases when it is shown that a criminal defendant has been previously convicted of any three or more felonies and after such convictions has committed a Class D felony, upon conviction, he or she must be punished for a Class C felony.

§ 13A-5-9.1. Retroactive application of Section 13A-5-9. [Repealed]

Repealed: Acts 2014, No. 14-165, § 1, effective March 13, 2014.

§ 13A-5-10. Repeat or habitual offenders; hearings; corporations.

- (a) The court may conduct a hearing upon the issue of whether a defendant is a repeat or habitual offender under Section

13A-5-9, according to procedures established by rule of court.

(b) Section 13A-5-9 does not apply to a corporation.

§ 13A-5-10.1. Repeat or habitual offenders; proof of prior convictions.

- (a) Certified copies of case action summary sheets, docket sheets or other records of the court are admissible for the purpose of proving prior convictions of a crime, if the prior conviction is otherwise admissible under the laws of this state.
- (b) If the trial court determines that the defendant would be prejudiced by the admission of the documents described in subsection (a) the court may admit into evidence and inform the jury of the fact of the conviction but not allow the jury to view the prejudicial documents.
- (c) If the document described in subsection (a) indicates that the defendant was represented by an attorney, it is presumed that the attorney was present in court with the defendant at all critical stages of the proceeding.

§ 13A-5-11. Fines; felonies.

- (a) A sentence to pay a fine for a felony shall be for a definite amount, fixed by the court, within the following limitations:
 - (1) For a Class A felony, not more than \$60,000;
 - (2) For a Class B felony, not more than \$30,000;
 - (3) For a Class C felony, not more than \$15,000;
 - (4) For a Class D felony, not more than \$7,500; or
 - (5) Any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.
- (b) As used in this section, “gain” means the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized or surrendered to lawful authority prior to the time sentence is

imposed. “Value” shall be determined by the standards established in subdivision (14) of Section 13A-8-1.

- (c) The court may conduct a hearing upon the issue of defendant’s gain or the victim’s loss from the crime according to procedures established by rule of court.
- (d) This section shall not apply if a higher fine is otherwise authorized by law for a specific crime.

§ 13A-5-12. Fines; misdemeanors and violations.

- (a) A sentence to pay a fine for a misdemeanor shall be for a definite amount, fixed by the court, within the following limitations:
 - (1) For a Class A misdemeanor, not more than \$6,000;
 - (2) For a Class B misdemeanor, not more than \$3,000;
 - (3) For a Class C misdemeanor, not more than \$500; or
 - (4) Any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.
- (b) A sentence to pay a fine for a violation shall be for a definite amount, fixed by the court, not to exceed \$200, or any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.
- (c) As used in this section, “gain” means the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized or surrendered to lawful authority prior to the time sentence is imposed. “Value” shall be determined by the standards established in subdivision (14) of Section 13A-8-1.
- (d) The court may conduct a hearing upon the issue of defendant’s gain or the victim’s loss from the crime according to procedures established by rule of court.

§ 13A-5-12.1. Fines; municipal court misdemeanors.

[Repealed]

Repealed: Acts 2011, No. 11-680, § 2, effective June 14, 2011.

§ 13A-5-13. Hate crimes.

~~(a) The Legislature finds and declares the following:~~

~~(1) It is the right of every person, regardless of race, color, religion, national origin, ethnicity, or physical or mental disability, to be secure and protected from threats of reasonable fear, intimidation, harassment, and physical harm caused by activities of groups and individuals.~~

~~(2) It is not the intent, by enactment of this section, to interfere with the exercise of rights protected by the Constitution of the State of Alabama or the United States.~~

~~(3) The intentional advocacy of unlawful acts by groups or individuals against other persons or groups and bodily injury or death to persons is not constitutionally protected when violence or civil disorder is imminent, and poses a threat to public order and safety, and such conduct should be subjected to criminal sanctions.~~

~~(b) The purpose of this section is to impose additional penalties where it is shown that a perpetrator committing the underlying offense was motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, or physical or mental disability.~~

~~(c) A person who has been found guilty of a crime, the commission of which was shown beyond a reasonable doubt to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, sexual orientation, or physical or mental disability, shall be punished as follows:~~

~~(1) Felonies:~~

~~a. On conviction of a Class A felony that was found to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, sexual orientation, or physical or mental disability, the sentence shall not be less than 15 years.~~

~~b. On conviction of a Class B felony that was found to have been motivated by the victim's actual or~~

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perceived race, color, religion, national origin, ethnicity, sexual orientation, or physical or mental disability, the sentence shall not be less than 10 years.

- c. On conviction of a Class C felony that was found to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, sexual orientation, or physical or mental disability, the sentence shall not be less than two years.
- d. On conviction of a Class D felony that was found to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, sexual orientation, or physical or mental disability, the sentence shall not be less than 18 months.
- e. For purposes of this subdivision, a criminal defendant who has been previously convicted of any felony and receives an enhanced sentence pursuant to this section is also subject to enhanced punishment under the Alabama Habitual Felony Offender Act, Section 13A-5-9.

(2) Misdemeanors:

On conviction of a misdemeanor which was found beyond a reasonable doubt to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, sexual orientation, or physical or mental disability, the defendant shall be sentenced for a Class A misdemeanor, except that the defendant shall be sentenced to a minimum of three months.

**Article 2 Death Penalty and Life Imprisonment
without Parole**

§§ 13A-5-30 — 13A-5-38. [Repealed.]

Repealed: Acts 1981, No. 81-178.

§ 13A-5-39. Definitions.

As used in this article, these terms shall be defined as follows:

- (1) **Capital offense.** —An offense for which a defendant shall be punished by a sentence of death or life imprisonment without parole, or in the case of a defendant who establishes that he or she was under the age of 18 years at the time of the capital offense, ~~life imprisonment, or life imprisonment without parole,~~ or life imprisonment, according to the provisions of this article.
- (2) **During.** —The term as used in Section 13A-5-40(a) means in the course of or in connection with the commission of, or in immediate flight from the commission of the underlying felony or attempt thereof.
- (3) **Explosives and Explosion.** —The terms shall have the meanings provided in Section 13A-7-40(2) and (3).
- (4) **Burden of interjecting the issue.** —Shall be defined as provided in Section 13A-1-2(14) [now § 13A-1-2(2)].
- (5) **Murder and murder by the defendant.** —Shall be defined as provided in Section 13A-5-40(b).
- (6) **Previously convicted and prior criminal activity.** — As used in Sections 13A-5-49(2) and 13A-5-51(1), these terms refer to events occurring before the date of the sentence hearing.
- (7) **Under sentence of imprisonment.** —As used in Section 13A-5-49(1), the term means while serving a term of imprisonment, while under a suspended sentence, while on probation or parole, or while on work release, furlough, escape, or any other type of

release or freedom while or after serving a term of imprisonment, other than unconditional release and freedom after expiration of the term of sentence.

**§ 13A-5-40. Capital offenses enumerated —
Accountability for behavior of another.**

- (a) The following are capital offenses:
- (1) Murder by the defendant during a kidnapping in the first degree or an attempt thereof committed by the defendant.
 - (2) Murder by the defendant during a robbery in the first degree or an attempt thereof committed by the defendant.
 - (3) Murder by the defendant during a rape in the first or second degree or an attempt thereof committed by the defendant; ~~or murder by the defendant during sodomy in the first or second degree or an attempt thereof committed by the defendant.~~
 - (4) Murder by the defendant during a burglary in the first or second degree or an attempt thereof committed by the defendant.
 - (5) Murder of any state or federal law enforcement officer including but not limited to any police officer, sheriff, deputy, state trooper, federal law enforcement officer, or any other state or federal peace officer of any kind, district attorney's investigator, attorney general's investigator, correctional officer, or prison or jail guard, while such officer or guard is on duty, regardless of whether the defendant knew or should have known the victim was ~~an officer or guard~~ on duty, or because of some official or job-related act or performance of such officer or guard.
 - (6) Murder committed while the defendant is under sentence of life imprisonment.
 - (7) Murder done for a pecuniary or other valuable consideration or pursuant to a contract or for hire.

- (8) Murder by the defendant during sexual abuse in the first or second degree or an attempt thereof committed by the defendant.
- (9) Murder by the defendant during arson in the first or second degree committed by the defendant; or murder by the defendant by means of explosives or explosion.
- (10) Murder wherein two or more persons are murdered by the defendant by one act or pursuant to one scheme or course of conduct.
- (11) Murder by the defendant when the victim is a state or federal public official or former public official and the murder stems from or is caused by or is related to his or her official position, act, or capacity.
- (12) Murder by the defendant during the act of unlawfully assuming control of any aircraft by use of threats or force with intent to obtain any valuable consideration for the release of said aircraft or any passenger or crewmen thereon or to direct the route or movement of said aircraft, or otherwise exert control over said aircraft.
- (13) Murder by a defendant who has been convicted of any other murder in the 20 years preceding the crime; provided that the murder which constitutes the capital crime shall be murder as defined in subsection (b) of this section; and provided further that the prior murder conviction referred to shall include murder in any degree as defined at the time and place of the prior conviction.
- (14) Murder when the victim has been listed as a witness on a warrant, indictment, information, or complaint, or is subpoenaed; or has been subpoenaed; to testify, or the victim had testified, in any preliminary hearing, grand jury proceeding, criminal trial or criminal proceeding of whatever nature, or civil trial or civil proceeding of whatever nature, in any municipal, state, or federal court, when the murder stems from, is caused by, or is related to the capacity or role of the victim as a witness.

- (15) Murder when the victim is less than fourteen years of age.
- (16) Murder committed by or through the use of a deadly weapon fired or otherwise used from outside a dwelling while the victim is in a dwelling.
- (17) Murder committed by or through the use of a deadly weapon while the victim is in a vehicle.
- (18) Murder committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle.
- (19) Murder by the defendant where a court had issued a protective order for the victim, against the defendant, pursuant to Section 30-5-1 et seq., or the protective order was issued as a condition of the defendant's pretrial release.
- (b) Except as specifically provided to the contrary in the last part of subdivision (a)(13) of this section, the terms "murder" and "murder by the defendant" as used in this section to define capital offenses mean murder as defined in Section 13A-6-2(a)(1), but not as defined in Section 13A-6-2(a)(2) and (3). Subject to the provisions of Section 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3), as well as murder as defined in Section 13A-6-2(a)(1), may be a lesser included offense of the capital offenses defined in subsection (a) of this section.
- (c) A defendant who does not personally commit the act of killing which constitutes the murder is not guilty of a capital offense defined in subsection (a) of this section unless that defendant is legally accountable for the murder because of complicity in the murder itself under the provisions of Section 13A-2-23, in addition to being guilty of the other elements of the capital offense as defined in subsection (a) of this section.
- (d) To the extent that a crime other than murder is an element of a capital offense defined in subsection (a) of this section, a defendant's guilt of that other crime may also be established under Section 13A-2-23. When the defendant's guilt of that other crime is established under Section 13A-

2-23, that crime shall be deemed to have been “committed by the defendant” within the meaning of that phrase as it is used in subsection (a) of this section.

§ 13A-5-41. Lesser included offenses.

Subject to the provisions of Section 13A-1-9(b), the jury may find a defendant indicted for a crime defined in Section 13A-5-40(a) not guilty of the capital offense but guilty of a lesser included offense or offenses. Lesser included offenses shall be defined as provided in Section 13A-1-9(a), and when there is a rational basis for such a verdict, include but are not limited to, murder as defined in Section 13A-6-2(a), and the accompanying other felony, if any, in the provision of Section 13A-5-40(a) upon which the indictment is based.

§ 13A-5-42. Guilty pleas.

A defendant who is indicted for a capital offense may plead guilty to it, but the state, only in cases where the death penalty is to be imposed, must prove the defendant’s guilt of the capital offense beyond a reasonable doubt to a jury. The guilty plea may be considered in determining whether the state has met that burden of proof. The guilty plea shall have the effect of waiving all non-jurisdictional defects in the proceeding resulting in the conviction except the sufficiency of the evidence. A defendant convicted of a capital offense after pleading guilty to it shall be sentenced according to the provisions of Section 13A-5-43(d).

§ 13A-5-43. Initial determination of guilt or innocence.

(a) In the trial of a capital offense the jury shall first hear all the admissible evidence offered on the charge or charges against the defendant. It shall then determine whether the defendant is guilty of the capital offense or offenses with which ~~he~~ the defendant is charged or of any lesser included offense or offenses considered pursuant to Section 13A-5-41.

- (b) If the defendant is found not guilty of the capital offense or offenses with which ~~he~~the defendant is charged, and not guilty of any lesser included offense or offenses considered pursuant to Section 13A-5-41, the defendant shall be discharged.
- (c) If the defendant is found not guilty of the capital offense or offenses with which ~~he~~the defendant is charged, and is found guilty of a lesser included offense or offenses considered pursuant to Section 13A-5-41, sentence shall be determined and imposed as provided by law.
- (d) If the defendant is found guilty of a capital offense or offenses with which ~~he~~the defendant is charged and the defendant does not establish to the court by a preponderance of the evidence that he or she was under the age of 18 years at the time of the capital offense or offenses with which he or she is found guilty, the sentence shall be determined as provided in Sections 13A-5-45 through 13A-5-53.
- (e) If the defendant is found guilty of a capital offense or offenses with which he or she is charged and the defendant establishes to the court by a preponderance of the evidence that he or she was under the age of 18 years at the time of the capital offense or offenses, the sentence shall be either life imprisonment without the possibility of parole or, in the alternative, life imprisonment, and the sentence shall be determined by the procedures set forth in the Alabama Rules of Criminal Procedure for judicially imposing sentences within the range set by statute without a jury, rather than as provided in Sections 13A-5-45 to 13A-5-53, inclusive. The judge shall consider all relevant mitigating circumstances.

If the defendant is sentenced to life imprisonment on a capital offense, the defendant must serve a minimum of 30 years, day for day, prior to first consideration of parole.

§ 13A-5-43.1. Life imprisonment for certain crimes by persons under 18 years of age.

Notwithstanding any other provision of law, if a defendant is found guilty of any non-homicide crime for which the only sentence provided by law is life imprisonment without the possibility of parole and that defendant proves by a preponderance of the evidence that he or she was under the age of 18 years at the time of the offense, the sentence shall be life imprisonment.

§ 13A-5-43.2. Applicability of certain provisions to persons under 18 years of age.

Acts 2016, No. 16-360 shall apply to any person under the age of 18 years at the time an offense was committed who was sentenced to life without the possibility of parole under Section 13A-5-2, 13A-5-39, 13A-5-43, or 13A-6-2, whether the person is currently incarcerated or hereinafter convicted.

§ 13A-5-44. Juries.

- (a) The selection of the jury for the trial of a capital case shall include the selection of at least two alternate jurors chosen according to procedures specified by law or court rule.
- (b) The separation of the jury during the pendency of the trial of a capital case shall be governed by applicable law or court rule.
- (c) Notwithstanding any other provision of law, the defendant with the consent of the state and with the approval of the court may waive the participation of a jury in the sentence hearing provided in Section 13A-5-46. Provided, however, before any such waiver is valid, it must affirmatively appear in the record that the defendant ~~himself~~ has freely waived his or her right to the participation of a jury in the sentence proceeding, after having been expressly informed of such right.

§ 13A-5-45. Sentence hearing; generally.

- (a) Upon conviction of a defendant for a capital offense, the trial court shall conduct a separate sentence hearing to determine whether the defendant shall be sentenced to life imprisonment without parole or to death. The sentence hearing shall be conducted as soon as practicable after the defendant is convicted. Provided, however, if the sentence hearing is to be conducted before the trial judge without a jury or before the trial judge and a jury other than the trial jury, as provided elsewhere in this article, the trial court with the consent of both parties may delay the sentence hearing until it has received the pre-sentence investigation report specified in Section 13A-5-47(b). Otherwise, the sentence hearing shall not be delayed pending receipt of the pre-sentence investigation report.
- (b) The state and the defendant shall be allowed to make opening statements and closing arguments at the sentence hearing. The order of those statements and arguments and the order of presentation of the evidence shall be the same as at trial.
- (c) At the sentence hearing evidence may be presented as to any matter that the court deems relevant to ~~sentence~~ sentencing and shall include any matters relating to the aggravating and mitigating circumstances referred to in Sections 13A-5-49, 13A-5-51 and 13A-5-52. Evidence presented at the trial of the case may be considered insofar as it is relevant to the aggravating and mitigating circumstances without the necessity of re-introducing that evidence at the sentence hearing, unless the sentence hearing is conducted before a jury other than the one before which the defendant was tried.
- (d) Any evidence which has probative value and is relevant to ~~sentence~~ sentencing shall be received at the sentence hearing regardless of its admissibility under the exclusionary rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. This subsection shall not be construed to authorize the introduction of any evidence secured in

violation of the Constitution of the United States or the State of Alabama.

- (e) At the sentence hearing the state shall have the burden of proving beyond a reasonable doubt the existence of any aggravating circumstances. Provided, however, any aggravating circumstance which the verdict convicting the defendant establishes was proven beyond a reasonable doubt at trial shall be considered as proven beyond a reasonable doubt for purposes of the sentence hearing.
- (f) Unless at least one aggravating circumstance as defined in Section 13A-5-49 exists, the sentence shall be life imprisonment without parole.
- (g) The defendant shall be allowed to offer any mitigating circumstance defined in Sections 13A-5-51 and 13A-5-52. When the factual existence of an offered mitigating circumstance is in dispute, the defendant shall have the burden of interjecting the issue, but once it is interjected the state shall have the burden of disproving the factual existence of that circumstance by a preponderance of the evidence.

§ 13A-5-46. Sentence hearing; juries.

- (a) Unless both parties₂ with the consent of the court₂ waive the right to have the sentence hearing conducted before a jury as provided in Section 13A-5-44(c), it shall be conducted before a jury which shall return an advisory verdict as provided by subsection (e) of this section. If both parties with the consent of the court waive the right to have the hearing conducted before a jury, the trial judge shall proceed to determine sentence without an advisory verdict from a jury. Otherwise, the hearing shall be conducted before a jury as provided in the remaining subsections of this section.
- (b) If the defendant was tried and convicted by a jury, the sentence hearing shall be conducted before that same jury unless it is impossible or impracticable to do so. If it is impossible or impracticable for the trial jury to sit at the sentence hearing, or if the case on appeal is remanded for a

new sentence hearing before a jury, a new jury shall be ~~impanelled~~impaneled to sit at the sentence hearing. The selection of that jury shall be according to the laws and rules governing the selection of a jury for the trial of a capital case.

- (c) The separation of the jury during the pendency of the sentence hearing, and if the sentence hearing is before the same jury which convicted the defendant, the separation of the jury during the time between the guilty verdict and the beginning of the sentence hearing, shall be governed by the law and court rules applicable to the separation of the jury during the trial of a capital case.
- (d) After hearing the evidence and the arguments of both parties at the sentence hearing, the jury shall be instructed on its function and on the relevant law by the trial judge. The jury shall then retire to deliberate concerning the advisory verdict it is to return.
- (e) After deliberation, the jury shall return an advisory verdict as follows:
 - (1) If the jury determines that no aggravating circumstances as defined in Section 13A-5-49 exist, it shall return an advisory verdict recommending to the trial court that the penalty be life imprisonment without parole;
 - (2) If the jury determines that one or more aggravating circumstances as defined in Section 13A-5-49 exist but do not outweigh the mitigating circumstances, it shall return an advisory verdict recommending to the trial court that the penalty be life imprisonment without parole;
 - (3) If the jury determines that one or more aggravating circumstances as defined in Section 13A-5-49 exist and that they outweigh the mitigating circumstances, if any, it shall return an advisory verdict recommending to the trial court that the penalty be death.
- (f) The decision of the jury to return an advisory verdict recommending a sentence of life imprisonment without parole must be based on a vote of a majority of the jurors.

The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors. The verdict of the jury must be in writing and must specify the vote.

- (g) If the jury is unable to reach an advisory verdict recommending a sentence, or for other manifest necessity, the trial court may declare a mistrial of the sentence hearing. Such a mistrial shall not affect the conviction. After such a mistrial or mistrials another sentence hearing shall be conducted before another jury, selected according to the laws and rules governing the selection of a jury for the trial of a capital case. Provided, however, that, subject to the provisions of Section 13A-5-44(c), after one or more mistrials both parties with the consent of the court may waive the right to have an advisory verdict from a jury, in which event the issue of sentence shall be submitted to the trial court without a recommendation from a jury.

§ 13A-5-47. Sentence determination — Pre-sentence investigation reports.

- (a) After the sentence hearing has been conducted, and after the jury has returned an advisory verdict, or after such a verdict has been waived as provided in Section 13A-5-46(a) or Section 13A-5-46(g), the trial court shall proceed to determine the sentence.
- (b) Before making the sentence determination, the trial court shall order and receive a written pre-sentence investigation report. The report shall contain the information prescribed by law or court rule for felony cases generally and any additional information specified by the trial court. No part of the report shall be kept confidential, and the parties shall have the right to respond to it and to present evidence to the court about any part of the report which is the subject of factual dispute. The report and any evidence submitted in connection with it shall be made part of the record in the case.
- (c) Before imposing sentence the trial court shall permit the parties to present arguments concerning the existence of aggravating and mitigating circumstances and the proper

sentence to be imposed in the case. The order of the arguments shall be the same as at the trial of a case.

- (d) Based upon the evidence presented at trial, the evidence presented during the sentence hearing, and the pre-sentence investigation report and any evidence submitted in connection with it, the trial court shall enter specific written findings concerning the existence or nonexistence of each aggravating circumstance enumerated in Section 13A-5-49, each mitigating circumstance enumerated in Section 13A-5-51, and any additional mitigating circumstances offered pursuant to Section 13A-5-52. The trial court shall also enter written findings of facts summarizing the crime and the defendant's participation in it.
- (e) In deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to exist outweigh the mitigating circumstances it finds to exist, and in doing so the trial court shall consider the recommendation of the jury contained in its advisory verdict, unless such a verdict has been waived pursuant to Section 13A-5-46(a) or Section 13A-5-46(g). While the jury's recommendation concerning sentence shall be given consideration, it is not binding upon the court.

§ 13A-5-48. Weighing aggravating and mitigating circumstances.

The process described in Sections 13A-5-46(e)(2), 13A-5-46(e)(3) and Section 13A-5-47(e) of weighing the aggravating and mitigating circumstances to determine the sentence shall not be defined to mean a mere tallying of aggravating and mitigating circumstances for the purpose of numerical comparison. Instead, it shall be defined to mean a process by which circumstances relevant to sentence are marshalled and considered in an organized fashion for the purpose of determining whether the proper sentence in view of all the relevant circumstances in an individual case is life imprisonment without parole or death.

§ 13A-5-49. Aggravating circumstances; enumerated.

Aggravating circumstances shall be the following:

- (1) The capital offense was committed by a person under sentence of imprisonment;
- (2) The defendant was previously convicted of another capital offense or a felony involving the use or threat of violence to the person;
- (3) The defendant knowingly created a great risk of death to many persons;
- (4) The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, rape, robbery, burglary or kidnapping;
- (5) The capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;
- (6) The capital offense was committed for pecuniary gain;
- (7) The capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws;
- (8) The capital offense was especially heinous, atrocious, or cruel compared to other capital offenses;
- (9) The defendant intentionally caused the death of two or more persons by one act or pursuant to one scheme or course of conduct; or
- (10) The capital offense was one of a series of intentional killings committed by the defendant.
- (11) The defendant intentionally caused the death of any state or federal law enforcement officer including but not limited to any police officer, sheriff, deputy, state trooper, district attorney's investigator, attorney general's investigator, correctional officer, or prison or jail guard, while such officer or guard was on duty, regardless of whether the defendant knew or should have known the victim was on duty, or because of some official or job-related act or performance of such officer or guard.

§ 13A-5-50. Aggravating circumstances; capital offenses including aggravating circumstances.

The fact that a particular capital offense as defined in Section 13A-5-40(a) necessarily includes one or more aggravating circumstances as specified in Section 13A-5-49 shall not be construed to preclude the finding and consideration of that relevant circumstance or circumstances in determining sentence. By way of illustration and not limitation, the aggravating circumstance specified in Section 13A-5-49(4) shall be found and considered in determining sentence in every case in which a defendant is convicted of the capital offenses defined in subdivisions (1) through (4) of subsection (a) of Section 13A-5-40.

§ 13A-5-51. Mitigating circumstances; enumerated.

Mitigating circumstances shall include, but not be limited to, the following:

- (1) The defendant has no significant history of prior criminal activity;
- (2) The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance;
- (3) The victim was a participant in the defendant's conduct or consented to it;
- (4) The defendant was an accomplice in the capital offense committed by another person and ~~his~~ the defendant's participation was relatively minor;
- (5) The defendant acted under extreme duress or under the substantial domination of another person;
- (6) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired; and
- (7) The age of the defendant at the time of the crime.

§ 13A-5-52. Mitigating circumstances; additional circumstances.

In addition to the mitigating circumstances specified in Section 13A-5-51, mitigating circumstances shall include any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant offers as a basis for a sentence of life imprisonment without parole instead of death, and any other relevant mitigating circumstance which the defendant offers as a basis for a sentence of life imprisonment without parole instead of death.

§ 13A-5-53. Appeals; generally.

- (a) In any case in which the death penalty is imposed, in addition to reviewing the case for any error involving the conviction, the Alabama Court of Criminal Appeals, subject to review by the Alabama Supreme Court, shall also review the propriety of the death sentence. This review shall include the determination of whether any error adversely affecting the rights of the defendant was made in the sentence proceedings, whether the trial court's findings concerning the aggravating and mitigating circumstances were supported by the evidence, and whether death was the proper sentence in the case. If the court determines that an error adversely affecting the rights of the defendant was made in the sentence proceedings or that one or more of the trial court's findings concerning aggravating and mitigating circumstances were not supported by the evidence, it shall remand the case for new proceedings to the extent necessary to correct the error or errors. If the appellate court finds that no error adversely affecting the rights of the defendant was made in the sentence proceedings and that the trial court's findings concerning aggravating and mitigating circumstances were supported by the evidence, it shall proceed to review the propriety of the decision that death was the proper sentence.
- (b) In determining whether death was the proper sentence in the case the Alabama Court of Criminal Appeals, subject to review by the Alabama Supreme Court, shall determine:

- (1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;
 - (2) Whether an independent weighing of the aggravating and mitigating circumstances at the appellate level indicates that death was the proper sentence; and
 - (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.
- (c) The Court of Criminal Appeals shall explicitly address each of the three questions specified in subsection (b) of this section in every case it reviews in which a sentence of death has been imposed.
- (d) After performing the review specified in this section, the Alabama Court of Criminal Appeals, subject to review by the Alabama Supreme Court, shall be authorized to:
- (1) Affirm the sentence of death;
 - (2) Set the sentence of death aside and remand to the trial court for correction of any errors occurring during the sentence proceedings and for imposition of the appropriate penalty after any new sentence proceedings that are necessary, provided that such errors shall not affect the determination of guilt and shall not preclude the imposition of a sentence of death where it is determined to be proper after any new sentence proceedings that are deemed necessary; or
 - (3) In cases in which the death penalty is deemed inappropriate under subdivision (b)(2) or (b)(3) of this section, set the sentence of death aside and remand to the trial court with directions that the defendant be sentenced to life imprisonment without parole.

§ 13A-5-54. Appointed legal counsel.

Each person indicted for an offense punishable under the provisions of this article who is not able to afford legal counsel must be provided with court appointed counsel having no less than five years' prior experience in the active practice of criminal law.

§ 13A-5-55. Appeals; automatic reviews of conviction.

In all cases in which a defendant is sentenced to death, the judgment of conviction shall be subject to automatic review. The sentence of death shall be subject to review as provided in Section 13A-5-53.

~~**§ 13A-5-56. Pattern indictment forms, verdict forms and jury instructions.**~~

~~The Alabama Supreme Court shall promulgate pattern indictment forms for use in cases in which indictments charging offenses defined in Section 13A-5-40(a) are thereafter returned. The Alabama Supreme Court shall also promulgate pattern verdict forms and pattern jury instructions for the trial and sentencing aspects of cases tried thereafter under this article, insofar as such verdicts and instructions relate to the particularities of cases tried under this article.~~

~~**§ 13A-5-57. Applicability Repealer.**~~

- ~~(a) This article applies only to conduct occurring after 12:01 A.M. on July 1, 1981. Conduct occurring before 12:01 A.M. on July 1, 1981 shall be governed by pre-existing law.~~
- ~~(b) Sections 13A-5-30 through 13A-5-38 [repealed] are hereby repealed. All other laws or parts of laws in conflict with this article are hereby repealed. This repealer shall not affect the application of pre-existing law to conduct occurring before 12:01 A.M. on July 1, 1981.~~

~~**§ 13A-5-58. Interpretation; constitutionality of article.**~~

~~This article shall be interpreted, and if necessary reinterpreted, to be constitutional.~~

§ 13A-5-59. Interpretation; unconstitutionality of article.

It is the intent of the Legislature that if the death penalty provisions of this article are declared unconstitutional and if the offensive provision or provisions cannot be reinterpreted so as to provide a constitutional death penalty, or if the death penalty is ever declared to be unconstitutional per se, that the defendants who have been sentenced to death under this article shall be re-sentenced to life imprisonment without parole. It is also the intent of the Legislature that in the event that the death penalty provisions of this article are declared unconstitutional and if they cannot be reinterpreted to provide a constitutional death penalty, or if the death penalty is ever declared to be unconstitutional per se, that defendants convicted thereafter for committing crimes specified in Section 13A-5-40(a) shall be sentenced to life imprisonment without parole.

TITLE 13A Criminal Code
CHAPTER 6 Offenses Involving Danger to the Person
Article 1 Homicide

§ 13A-6-1. Definitions.

- (a) As used in Article 1 and Article 2, the following terms shall have the meanings ascribed to them by this section:
- (1) **Criminal homicide.** —Murder, manslaughter, or criminally negligent homicide.
 - (2) **Homicide.** —A person commits criminal homicide if he intentionally, knowingly, recklessly or with criminal negligence causes the death of another person.
 - (3) **Person.** —The term, when referring to the victim of a criminal homicide or assault, means a human being, including an unborn child in utero at any stage of development, regardless of viability.
- (b) Article 1 or Article 2 shall not apply to the death or injury to an unborn child alleged to be caused by medication or medical care or treatment provided to a pregnant woman when performed by a physician or other licensed health care provider.

Mistake, or unintentional error on the part of a licensed physician or other licensed health care provider or his or her employee or agent or any person acting on behalf of the patient shall not subject the licensed physician or other licensed health care provider or person acting on behalf of the patient to any criminal liability under this section.

Medical care or treatment includes, but is not limited to, ordering, dispensation or administration of prescribed medications and medical procedures.

- (c) A victim of domestic violence or sexual assault may not be charged under Article 1 or Article 2 for the injury or death of an unborn child caused by a crime of domestic violence or rape perpetrated upon her.
- (d) Nothing in Article 1 or Article 2 shall permit the prosecution of (1) any person for conduct relating to an abortion for which the consent of the pregnant woman or a

person authorized by law to act on her behalf has been obtained or for which consent is implied by law or (2) any woman with respect to her unborn child.

- (e) Nothing in this section shall make it a crime to perform or obtain an abortion that is otherwise legal. Nothing in this section shall be construed to make an abortion legal which is not otherwise authorized by law.

§ 13A-6-2. Murder.

- (a) A person commits the crime of murder if he or she does any of the following:
 - (1) With intent to cause the death of or serious physical injury to another person, he or she causes the death of that person or of another person.
 - (2) He or she knowingly causes the death of another person.
 - ~~(2)~~(3) Under circumstances manifesting extreme indifference to human life, he or she recklessly engages in conduct which creates a grave risk of death to a person other than himself or herself, and thereby causes the death of another person.
 - ~~(3)~~(4) He or she commits or attempts to commit arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, ~~sodomy in the first degree,~~ aggravated child abuse ~~under Section 26-15-3.1,~~ or any other felony clearly dangerous to human life and, in the course of and in furtherance of the crime that he or she is committing or attempting to commit, or in immediate flight therefrom, he or she, or another participant if there be any, causes the death of any person.
 - ~~(4)~~(5) He or she commits the crime of arson and a qualified governmental or volunteer firefighter or other public safety officer dies while performing his or her duty resulting from the arson.
- (b) A person does not commit murder under subdivisions (a)(1) or (a)(2) of this section if he or she was moved to act

by a sudden heat of passion caused by provocation recognized by law, and before there had been a reasonable time for the passion to cool and for reason to reassert itself. The burden of injecting the issue of killing under legal provocation is on the defendant, but this does not shift the burden of proof. This subsection does not apply to a prosecution for, or preclude a conviction of, manslaughter or other crime.

- (c) Murder is a Class A felony; provided, that the punishment for murder or any offense committed under aggravated circumstances by a person 18 years of age or older, as provided by Article 2 of Chapter 5 of this title, is death or life imprisonment without parole, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto. The punishment for murder or any offense committed under aggravated circumstances by a person under the age of 18 years, as provided by Article 2 of Chapter 5, is either life imprisonment without parole, or life, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto and the applicable Alabama Rules of Criminal Procedure. If the defendant is sentenced to life on a capital offense, the defendant must serve a minimum of 30 years, day for day, prior to first consideration of parole.

§ 13A-6-3. Manslaughter.

- (a) A person commits the crime of manslaughter if:
- (1) He or she recklessly causes the death of another person, or
 - (2) He or she causes the death of another person under circumstances that would constitute murder under Section 13A-6-2; except, that he or she causes the death due to a sudden heat of passion caused by provocation recognized by law, and before a reasonable time for the passion to cool and for reason to reassert itself.
- (b) Manslaughter is a Class B felony.

§ 13A-6-4. Criminally negligent homicide.

- (a) A person commits the crime of criminally negligent homicide if he or she causes the death of another person by criminal negligence.
- (b) The jury may consider statutes and ordinances regulating the actor's conduct in determining whether the actor is culpably negligent under subsection (a).
- (c) Criminally negligent homicide is a Class A misdemeanor, except in cases in which the criminally negligent homicide is caused by the driver or operator of a vehicle or vessel who is driving or operating the vehicle or vessel in violation of Section 32-5A-191 or 32-5A-191.3; in these cases, criminally negligent homicide is a Class C felony.

Article 2 Assaults

§ 13A-6-20. Assault; first degree.

- (a) A person commits the crime of assault in the first degree if:
 - (1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or
 - (2) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of the body of another person, he or she causes such an injury to any person; or
 - (3) Under circumstances manifesting extreme indifference to the value of human life, he or she recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or
 - (4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first

degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, ~~sodomy in the first degree~~, aggravated child abuse, or any other felony clearly dangerous to human life, or of immediate flight therefrom, he or she causes a serious physical injury to another person; or

(5) While driving under the influence of alcohol or a controlled substance or any combination thereof in violation of Section 32-5A-191 or 32-5A-191.3, he or she causes serious physical injury to the person of another with a vehicle or vessel.

(b) Assault in the first degree is a Class B felony.

§ 13A-6-21. Assault; second degree.

(a) A person commits the crime of assault in the second degree if the person does any of the following:

(1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person.

(2) With intent to cause physical injury to another person, he or she causes physical injury to any person by means of a deadly weapon or a dangerous instrument.

(3) He or she recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.

(4) With intent to prevent a ~~peace officer~~law enforcement officer, as defined in ~~Section 36-21-60~~, a detention or correctional officer at any municipal or county jail or state penitentiary, emergency medical personnel, a ~~utility worker~~, or a firefighter from performing a lawful duty, he or she intends to cause physical injury and he or she causes physical injury to any person. For the purpose of this subdivision, a person who is a ~~peace officer~~law enforcement officer who is employed or under contract while off duty by a private or public entity is a ~~peace officer~~law enforcement officer performing a lawful duty when

the person is working in his or her approved uniform while off duty with the approval of his or her employing law enforcement agency.

Provided, however, that nothing contained herein shall be deemed or construed as amending, modifying or extending the classification of a ~~peace officer~~law enforcement officer as off-duty for workers compensation purposes or any other benefits to which a ~~peace officer~~law enforcement officer may otherwise be entitled to under law when considered on-duty. Additionally, nothing contained herein shall be deemed or construed as amending, modifying or extending the tort liability of any municipality as a result of any action or inaction on the part of an off-duty police officer.

- ~~(5) With intent to cause physical injury to a teacher or to an employee of a public educational institution during or as a result of the performance of his or her duty, he or she causes physical injury to any person.~~
- ~~(6) With intent to cause physical injury to a health care worker, including a nurse, physician, technician, or any other person employed by or practicing at a hospital as defined in Section 22-21-20; a county or district health department; a long term care facility; or a physician's office, clinic, or outpatient treatment facility during the course of or as a result of the performance of the duties of the health care worker or other person employed by or practicing at the hospital; the county or district health department; any health care facility owned or operated by the State of Alabama; the long term care facility; or the physician's office, clinic, or outpatient treatment facility; he or she causes physical injury to any person. This subdivision shall not apply to assaults by patients who are impaired by medication or to assaults on home health care workers while they are in private residences.~~

- ~~(7)~~ (5) For a purpose other than lawful medical or therapeutic treatment, he or she intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to ~~him or her~~ that person, without ~~his or her~~ that person's consent, a drug, substance or preparation capable of producing the intended harm.
- (b) Assault in the second degree is a Class C felony.
- ~~(c) For the purposes of this section, utility worker means any person who is employed by an entity that owns, operates, leases, or controls any plant, property, or facility for the generation, transmission, manufacture, production, supply, distribution, sale, storage, conveyance, delivery, or furnishing to or for the public of electricity, natural or manufactured gas, water, steam, sewage, or telephone service, including two or more utilities rendering joint service.~~

§ 13A-6-22. Assault; third degree.

- (a) A person commits the crime of assault in the third degree if:
- (1) With intent to cause physical injury to another person, he or she causes physical injury to any person; or
 - (2) He or she recklessly causes physical injury to another person; or
 - (3) With criminal negligence he or she causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
 - (4) With intent to prevent a ~~peace officer~~ law enforcement officer from performing a lawful duty, he or she causes physical injury to any person.
- (b) Assault in the third degree is a Class A misdemeanor.

§ 13A-6-23. Menacing.

- (a) A person commits the crime of menacing if, by physical action, he or she intentionally places or attempts to place another person in fear of imminent serious physical injury.
- (b) Menacing is a Class B misdemeanor.

§ 13A-6-24. Reckless endangerment.

- (a) A person commits the crime of reckless endangerment if he or she recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.
- (b) Reckless endangerment is a Class A misdemeanor.

§ 13A-6-25. Criminal coercion.

- (a) A person commits the crime of criminal coercion if, without legal authority, he or she threatens to confine, restrain or to cause physical injury to the threatened person or another, or to damage the property or reputation of the threatened person or another with intent thereby to induce the threatened person or another against ~~his~~that person's will to do an unlawful act or refrain from doing a lawful act.
- (b) Criminal coercion is a Class A misdemeanor.

§ 13A-6-26. Compelling ~~streetgang~~street gang membership.

- (a) For purposes of this section, the term "~~streetgang~~street gang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar arrangement in law or in fact, of three or more persons that, through its membership or through the agency of any member, engages in a course or pattern of criminal activity.
- (b) A person who expressly or by implication threatens to do bodily harm or does bodily harm to a person, a family member or a friend of the person, or any other person, or uses any other unlawful criminal means to solicit or cause any person to join or remain in a ~~streetgang~~street gang is guilty of the crime of compelling streetgang membership.
- (c) The crime of compelling streetgang membership is a Class C felony.

~~(d)~~ Notwithstanding subsection (c), the crime of compelling streetgang membership is a Class A felony if the defendant is over the age of 18 years and the other person is under the age of 18 years.

~~(e)~~ **(d)** This section shall not be construed to repeal other criminal laws. Whenever conduct proscribed by this section is also proscribed by any other provision of law, the provision which carries the more serious penalty shall apply.

**§ 13A-6-27. Criminal use of a defense spray —
Penalty for violation.**

- (a) The crime of criminal use of a defense spray is committed if the perpetrator uses a defense spray including, but not limited to pepper spray, foam and any other self-defense chemical spray against another person in the commission of a crime or against a law enforcement officer while the law enforcement officer is performing his or her official duties.
- (b) Criminal use of a defense spray is a Class C felony.

§ 13A-6-28. Burning of cross or American flag.

- (a) A person commits the crime of cross or the American flag burning if he or she, with the intent to intimidate any person or group of persons, burns, or causes to be burned, a cross or the American flag on the property of another, a highway, or other public place.
- (b) As used in this section, “intent to intimidate” means the intent to place a person or a group of persons in fear of ~~bodily harm~~ physical injury.
- (c) The crime of cross or the American flag burning is a Class C felony.

~~**§ 13A-6-29. Inappropriate medicating of child.**~~

- ~~(a) As used in this section, the following terms shall have the following meanings:~~
 - ~~(1) **Medically prescribed.** — In accordance with a physician’s prescription or in accordance with age-~~

~~appropriate directions for the over the counter medication.~~

~~(2) **Near fatality.** —An act that, as certified by a physician, places the child in serious or critical condition.~~

~~(b) There is established the crime of administration of medication by the owner, operator, or employee of a licensed or statutorily exempt child care facility with the intent to drug the child or alter the child's behavior beyond what is medically prescribed or with the reckless disregard for the health, safety, and welfare of the child.~~

~~(c) A violation of subsection (b) is punishable as follows:~~

~~(1) A violation which does not cause or contributes to the death, near fatality, dismemberment, or permanent disability of a child is a Class C felony.~~

~~(2) A violation which causes a near fatality, dismemberment, or permanent disability of a child is a Class B felony.~~

~~(3) A violation which causes the death of a child is a Class A felony.~~

Article 3 Kidnapping, Unlawful Imprisonment and Related Offenses

§ 13A-6-40. Definitions.

The following definitions apply in this article:

(1) **Restrain.** —To intentionally or knowingly restrict a person's movements unlawfully and without consent, so as to interfere substantially with ~~his~~the person's liberty by moving ~~him~~the person from one place to another, or by confining ~~him~~the person either in the place where the restriction commences or in a place to which ~~he~~the person has been moved. Restraint is "without consent" if it is accomplished by:

- a. Physical force, intimidation or deception, or
- b. Any means, including acquiescence of the victim, if ~~he~~the victim is a child less than 16 years old or an incompetent person and the parent, guardian or

other person or institution having lawful control or custody of ~~him~~ the victim has not acquiesced in the movement or confinement.

- (2) **Abduct.** —To restrain a person with intent to prevent ~~his~~ the person's liberation by either:
- a. Secreting or holding ~~him~~ the person in a place where ~~he~~ the person is not likely to be found, or
 - b. Using or threatening to use deadly physical force.
- (3) **Relative.** —A parent or stepparent, ancestor, sibling, uncle or aunt or other lawful custodian, including an adoptive relative of the same degree through marriage or adoption.

§ 13A-6-41. Unlawful imprisonment; first degree.

- (a) A person commits the crime of unlawful imprisonment in the first degree if he or she restrains another person under circumstances which expose the latter to a risk of serious physical injury.
- (b) Unlawful imprisonment in the first degree is a Class A misdemeanor.

§ 13A-6-42. Unlawful imprisonment; second degree.

- (a) A person commits the crime of unlawful imprisonment in the second degree if he or she restrains another person.
- (b) A person does not commit a crime under this section if:
 - (1) The person restrained is a child less than 18 years old, and
 - (2) The actor is a relative of the child, and
 - (3) The actor's sole purpose is to assume lawful control of the child.The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.
- (c) Unlawful imprisonment in the second degree is a Class C misdemeanor.

§ 13A-6-43. Kidnapping; first degree.

- (a) A person commits the crime of kidnapping in the first degree if he or she abducts another person with intent to

- (1) Hold ~~him~~ the other person for ransom or reward; or
 - ~~(2)~~ Use ~~him~~ as a shield or hostage; or
 - ~~(3)~~(2) Accomplish or aid the commission of any felony or flight therefrom; or
 - ~~(4)~~(3) Inflict physical injury upon ~~him~~ the other person, or to violate or abuse ~~him~~ the other person sexually; or
 - ~~(5)~~(4) Terrorize ~~him~~ the other person or a third person; or
 - ~~(6)~~(5) Interfere with the performance of any governmental or political function.
- ~~(b)~~ A person does not commit the crime of kidnapping in the first degree if he voluntarily releases the victim alive, and not suffering from serious physical injury, in a safe place prior to apprehension. The burden of injecting the issue of voluntary safe release is on the defendant, but this does not shift the burden of proof. This subsection does not apply to a prosecution for or preclude a conviction of kidnapping in the second degree or any other crime.
- ~~(e)~~(b) (b) Kidnapping in the first degree is a Class A felony.

§ 13A-6-44. Kidnapping; second degree.

- (a) A person commits the crime of kidnapping in the second degree if he or she abducts another person.
- (b) A person does not commit a crime under this section if:
 - (1) The abduction is not coupled with intent to use or to threaten to use deadly force,
 - (2) The actor is a relative of the person abducted, and
 - (3) The actor's sole purpose is to assume lawful control of that person.

The burden of injecting the issue of defense under this subsection is on the defendant, but this does not shift the burden of proof.

- (c) Kidnapping in the second degree is a Class B felony.

§ 13A-6-45. Interference with custody.

- (a) A person commits the crime of interference with custody if he or she knowingly takes or entices:

- (1) Any child under the age of 18 from the lawful custody of its parent, guardian or other lawful custodian, or
 - (2) Any committed person from the lawful custody of its parent, guardian or other lawful custodian. “Committed person” means, in addition to anyone committed under judicial warrant, any neglected, dependent or delinquent child, mentally defective or insane person or any other incompetent person entrusted to another’s custody by authority of law.
- (b) A person does not commit a crime under this section if the actor’s sole purpose is to assume lawful control of the child.
- The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.
- (c) Interference with custody is a ~~Class C felony~~ Class A misdemeanor.

Article 4 Sexual Offenses

§ 13A-6-60. Definitions.

The following definitions apply in this article:

- (1) **Forcible compulsion.** Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or herself or another person.
- (2) **Intrusion.** The act of a person forcing or placing into, or forcing or placing on, the body of another person.
- (3) **Mentally defective.** Such term means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.
- (4) **Mentally incapacitated.** Such term means that a person is rendered temporarily incapable of appraising or controlling his or her conduct owing to the influence of a narcotic or intoxicating substance administered to him or her without his or her consent, or to any other incapacitating act committed upon him or her without his or her consent.

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- (5) Physically helpless.** Such term means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (6) Sexual activity.** Such term means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body, or insertion of any object into the genital or anal openings of another person's body. Emission is not required. This term also includes those acts previously classified as deviate sexual intercourse. This section does not apply to vaginal or anal intrusions by a licensed medical doctor or medical personnel for the purpose of diagnosis or treatment or to a law-enforcement officer who is engaged in the lawfully authorized performance of his or her duties.
- (7) Sexual contact.** —Any touching of the sexual or other intimate parts of a ~~another person not married to the actor~~ or the discharge of the semen of one person onto the person of another, done for the purpose of gratifying the sexual desire of either party.
- (8) Sexual intercourse.** Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.
- ~~**(1) Sexual intercourse.** — Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.~~
- ~~**(2) Deviate sexual intercourse.** — Any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another.~~
- ~~**(3) Sexual contact.** — Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party.~~
- ~~**(4) Female.** — Any female person.~~
- ~~**(5) Mentally defective.** — Such term means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.~~

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- ~~(6) **Mentally incapacitated.** — Such term means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other incapacitating act committed upon him without his consent.~~
- ~~(7) **Physically helpless.** — Such term means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.~~
- ~~(8) **Forcible compulsion.** — Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.~~

§ 13A-6-61. Rape; first degree.

- (a) A person commits the crime of rape in the first degree if:
 - (1) ~~He or she~~That person engages in ~~sexual intercourse~~ sexual activity with a member of the opposite sex ~~another person~~ by forcible compulsion; or
 - (2) ~~He or she~~That person engages in ~~sexual intercourse~~ sexual activity with a member of the opposite sex ~~another person~~ who is incapable of consent by reason of being physically helpless, ~~or~~ mentally incapacitated, ~~or mentally defective~~; or
 - (3) ~~He or she~~That person, being 16 years or older, engages in ~~sexual intercourse~~ sexual activity with a member of the opposite sex ~~another person~~ who is less than 12 years old.
- (b) Rape in the first degree is a Class A felony.

§ 13A-6-62. Rape; second degree.

- (a) A person commits the crime of rape in the second degree if:
 - ~~(1)~~ Being 16 years old or older, ~~he or she~~ that person engages in ~~sexual intercourse~~ sexual activity with a ~~member of the opposite sex~~ another person less than 16 and more than 12 years old; provided, however, the

actor is at least two years older than the ~~member of the opposite sex~~other person.

~~(2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being mentally defective.~~

(b) Rape in the second degree is a Class B felony.

~~§ 13A-6-63. Sodomy; first degree.~~

~~(a) A person commits the crime of sodomy in the first degree if:~~

~~(1) He engages in deviate sexual intercourse with another person by forcible compulsion; or~~

~~(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or~~

~~(3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.~~

~~(b) Sodomy in the first degree is a Class A felony.~~

~~§ 13A-6-64. Sodomy; second degree.~~

~~(a) A person commits the crime of sodomy in the second degree if:~~

~~(1) He, being 16 years old or older, engages in deviate sexual intercourse with another person less than 16 and more than 12 years old.~~

~~(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.~~

~~(b) Sodomy in the second degree is a Class B felony.~~

~~§ 13A-6-65~~63. Sexual misconduct.

(a) A person commits the crime of sexual misconduct if: that person engages in sexual activity with another person without that person's consent under circumstances other than those covered by Sections 13A-6-61 and 13A-6-62; or with that person's consent where the consent was obtained by the use of any fraud or artifice.

- ~~(1) Being a male, he engages in sexual intercourse with a female without her consent, under circumstances other than those covered by Sections 13A-6-61 and 13A-6-62; or with her consent where consent was obtained by the use of any fraud or artifice; or~~
 - ~~(2) Being a female, she engages in sexual intercourse with a male without his consent; or~~
 - ~~(3) He or she engages in deviate sexual intercourse with another person under circumstances other than those covered by Sections 13A-6-63 and 13A-6-64. Consent is no defense to a prosecution under this subdivision.~~
- (b) Sexual misconduct is a Class A misdemeanor.

§ 13A-6-65.164. Sexual torture.

- (a) A person commits the crime of sexual torture:
- (1) By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse.
 - (2) By penetrating the vagina or anus or mouth of a person who is incapable of consent by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse.
 - (3) By penetrating the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture or to sexually abuse.
- (b) The crime of sexual torture is a Class A felony.

§ 13A-6-6665. Sexual abuse; first degree.

- ~~(a) A person commits the crime of sexual abuse in the first degree if:~~
- ~~(1) He subjects another person to sexual contact by forcible compulsion; or~~
 - ~~(2) He subjects another person to sexual contact who is incapable of consent by reason of being physically helpless or mentally incapacitated.~~
- ~~(b) Sexual abuse in the first degree is a Class C felony.~~

- (a) A person commits the crime of sexual abuse in the first degree if that person, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.
- (b) Sexual abuse of a child less than 12 years old is a Class B felony.

§ 13A-6-6766. Sexual abuse; second degree.

- ~~(a) A person commits the crime of sexual abuse in the second degree if:
 - ~~(1) He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old; or~~
 - ~~(2) He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.~~~~
- ~~(b) Sexual abuse in second degree is a Class A misdemeanor, except that if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.~~
- (a) A person commits the crime of sexual abuse in the second degree if:
 - (1) That person subjects another person to sexual contact by forcible compulsion; or
 - (2) That person subjects another person to sexual contact who is incapable of consent by reason of being physically helpless or mentally incapacitated.
- (e)(b) Sexual abuse in the second degree is a Class C felony.

§ 13A-6-67. Sexual Abuse in the Third Degree.

- (a) A person commits the crime of sexual abuse in the third degree if:
 - (1) That person subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old; or

(2) That person, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

(b) Sexual abuse in the third degree is a Class A misdemeanor, except that if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.

§ 13A-6-68. Indecent exposure.

(a) A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire ~~of himself or of any person other than his spouse,~~ he ~~the person~~ exposes his or her genitals under circumstances in which he or she knows his or her conduct is likely to cause affront or alarm in any public place or on the private premises of another or so near thereto as to be seen from such private premises.

(b) Indecent exposure is a Class A misdemeanor except a third or subsequent conviction shall be a Class C felony.

§ 13A-6-69. Child molestation; luring child someplace in order to perform or to propose sexual acts.

(a) It shall be unlawful for any person with lascivious intent to entice, allure, persuade or invite, or attempt to entice, allure, persuade or invite, any child under 16 years of age or any person believed by the defendant to be a child under 16 years of age to enter any vehicle, room, house, office or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or an act which constitutes the offense of ~~sodomy-rape~~ or for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.

(b) A violation of this section is a Class C felony.

~~§ 13A-6-69.1. Sexual abuse of child under 12.~~

- ~~(a) A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.~~
- ~~(b) Sexual abuse of a child less than 12 years old is a Class B felony.~~

§ 13A-6-70. Consent of victim.

- (a) Whether or not specifically stated, it is an element of every offense defined in this article, ~~with the exception of subdivision (a)(3) of Section 13A-6-65,~~ that the sexual act was committed without consent of the victim.
- (b) Lack of consent results from:
 - (1) Forcible compulsion; or
 - (2) Incapacity to consent; or
 - (3) If the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (c) A person is deemed incapable of consent if he or she is:
 - (1) Less than 16 years old; or
 - (2) Mentally defective; or
 - (3) Mentally incapacitated; or
 - (4) Physically helpless.

**Article 4A Sexual Offenses by School Employees
Involving a Student**

§ 13A-6-80. ~~“School employee” defined.~~ Definitions

- ~~(a) For purposes of this article, school employee includes a teacher, school administrator, student teacher, safety or resource officer, coach, adult volunteer in a position of authority or any other school employee who has contact with a student in his or her official capacity as a school employee.~~

~~(b) For purposes of this article, a “student” is defined as any person under the age of 19 years enrolled or attending classes in a licensed or accredited public, private, or church school that offers instruction in grades K-12, regardless of whether school is in session.~~

For the purposes of this article, the following words shall have the following meanings:

- 1) **SCHOOL EMPLOYEE** includes any person employed at any school as the term “school” is defined herein.
- 2) A **SCHOOL** is defined as a licensed or accredited public or private school, or church school, that offers instruction in grades K-12. This definition shall not include private residences in which students are taught by parents or tutors.
- 3) A **STUDENT** is defined as a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any schools as defined herein.

§ 13A-6-81. Sex act ~~or deviant sexual intercourse~~ with a student.

- (a) A person commits the crime of a school employee engaging in a sex act with a student under the age of 19 years if ~~he or she~~ the person is a school employee and engages in sexual intercourse as defined by Section 13A-6-60(110) or ~~deviant sexual intercourse~~ sexual activity as defined by 13A-6-60(211) with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section.
- (b) The crime of a school employee engaging in a sex act with a student is a Class B felony.

§ 13A-6-82. Sexual contact with a student.

- (a) A person commits the crime of a school employee having sexual contact with a student under the age of 19 years if ~~he or she~~ the person is a school employee and engages in

sexual contact, as defined by Section 13A-6-60(39), with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section. The crime of a school employee having sexual contact with a student is a Class C felony.

- (b) A person commits the crime of a school employee soliciting a sex act with a student under the age of 19 years if ~~he or she~~ the person is a school employee and solicits, persuades, encourages, harasses, or entices a student to engage in a sex act including, but not limited to, sexual intercourse, as defined by Section ~~13A-6-30(1)~~ 13A-6-60(10), ~~deviate sexual intercourse~~ sexual activity, as defined by Section ~~13A-6-30(2)~~ 13A-6-60(11), or sexual contact, as defined by Section ~~13A-6-30(3)~~ 13A-6-60(9). The crime of soliciting a student to perform a sex act is a Class A misdemeanor.

§ 13A-6-82.1. School employee distributing obscene material to a student.

- (a) A person commits the crime of school employee distributing obscene material to a student if ~~he or she~~ the person is a school employee and distributes or transmits, by any means, obscene matter that depicts sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct to a student.
- (b) A school employee distributing obscene material to a student is a Class A misdemeanor.

~~§ 13A-6-83. Disciplinary actions.~~

~~A school employee charged with the crime of engaging in a sex act or deviant sexual intercourse with a student or the crime of having sexual contact with a student may be placed on paid administrative leave while the charge is adjudicated. Upon the adjudication of the charge, further disciplinary action may be taken in accordance with the Teacher Tenure Act, Section 16-24-1 et seq. [repealed], the~~

Teacher Accountability Act, Section 16-24B-1, et seq., or the Fair Dismissal Act, Section 36-26-100, et seq. [repealed], whichever is applicable.

Article 5 Stalking and Aggravated Stalking

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§ 13A-6-90. ~~Stalking in the first degree~~ Definitions.

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise.

(a) **Course of conduct.** —A pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.

(b) **Credible threat.** —A threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.

(c) **Harasses.** —Engages in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term.

~~(a) A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree.~~

~~(b)(a) —The crime of stalking in the first degree is a Class C felony.~~

13A-6-91. Aggravated stalking in the first degree.

- (a) A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the first degree.
- (b) The crime of aggravated stalking in the first degree is a Class B felony.

§ 13A-6-92. Aggravated stalking in the second degree.

- (a) A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the second degree.
- (b) The crime of aggravated stalking in the second degree is a Class C felony.

§ 13A-6-93. Stalking in the first degree.

- (a) A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree.
- (b) The crime of stalking in the first degree is a Class C felony.

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~~§ 13A-6-90.~~13A-6-94. Stalking in the second degree.

- (a) A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree.
- (b) The crime of stalking in the second degree is a Class B misdemeanor.

~~§ 13A-6-91. Aggravated stalking in the first degree.~~

- ~~(a) — A person who violates the provisions of Section 13A-6-90(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the first degree.~~
- ~~(b) The crime of aggravated stalking in the first degree is a Class B felony.~~

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~~§ 13A-6-91.1. Aggravated stalking in the second degree.~~

- ~~(a) A person who violates the provisions of Section 13A-6-90.1 and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the second degree.~~
- ~~(b) The crime of aggravated stalking in the second degree is a Class C felony.~~

~~§ 13A-6-92. Definitions.~~

~~As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise.~~

- ~~(a) **Course of conduct.**—A pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.~~
- ~~(b) **Credible threat.**—A threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.~~
- ~~(c) **Harasses.**—Engages in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term.~~

~~§ **13A-6-93. Construction; similar provisions.**~~

~~This article shall not be construed to repeal other criminal laws. Whenever conduct prescribed by any provision of this article is also prescribed by any other provision of law, the provision which carries the more serious penalty shall be applied.~~

~~§ **13A-6-94. Construction; constitutionality of article.**~~

~~This article shall be construed and, if necessary, reconstrued to sustain its constitutionality.~~

**Article 6 ~~Sex Offenses by Computer Use Involving a~~
~~Child Transmitting Obscene Material To A Child and~~
~~Solicitation Of Children By Electronic Means~~**

§ 13A-6-110. ~~Child; solicitation by computer.~~

~~{Repealed}Child; Solicitation by Computer~~

Definitions.

~~Repealed: Acts 2009, No. 09-745, § 9, effective May 22, 2009.~~

~~For purposes of this Article the following definitions apply.~~

- ~~(a) Child. A person less than 16 years old or a person the defendant reasonably believes to be less than 16 years old, and who is at least three years younger than the defendant or believed by the defendant to be at least three years younger than the defendant.~~
- ~~(b) Computer. An electronic, magnetic, optical, electrochemical, or other high speed data processing device or system that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, transferring, or examination or communication facilities that are connected or related to the device. This includes but is not limited to a telephone, cellular phone, digital music player, video game system, personal data assistant, facsimile machine, camera, computer, tablet, or any other electronic communication or storage device.~~
- ~~(c) A computer system is a set of related or interconnected computer or computer network equipment, devices and software.~~
- ~~(d) A computer program is an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.~~
- ~~(e) A local community is the judicial circuit in which the indictment is brought.~~

- (f)** Masturbation is manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation.
- (g)** Material is any book, magazine, newspaper, printed or written matter, writing, description, picture, drawing, animation, photograph, motion picture, film, video tape, pictorial representation, depiction, image, electrical or electronic reproduction, broadcast, transmission, telephone communication, sound re-cording, article, device, equipment, matter, oral communication, live performance, or dance.
- (h)** Nudity is the lewd showing of the post-pubertal human female breasts below a point immediately above the top of the areola and/or of the genitals or pubic area.
- (i)** Obscene means that the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and the material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political or scientific value.
- (j)** Sado-masochistic abuse means flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or the binding or physical restraining of a person who is nude or clad in undergarments or in a revealing or bizarre costume in an act of sexual stimulation.
- (k)** Sexual acts include sexual intercourse, sexual activity, sexual performance, obscene sexual performance, or sexual conduct for his/her benefit.
- (l)** Sexual conduct is any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; or any other physical contact with a person's unclothed genitals.

pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion.

(m) Sexual intercourse means intercourse, real or simulated, whether genital-genital, genital-anal, oral-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal and has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

(n) Sexual performance means an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.

(o) Solicitation means to request, command, seek, plead, entreat, ask, lure or tempt.

(p) Visual depiction is a portrayal, representation, illustration, image, likeness, or other thing that creates a sensory impression, whether an original, duplicate, or reproduction.

§ 13A-6-111. Child; transmission of obscene material.

~~(a)~~ A person is guilty of transmitting obscene material to a child if the person transmits to a child, by means of any computer communication system allowing the input, output, examination, or transfer of computer programs ~~from one computer to another~~, material which, in whole or in part, depicts actual or simulated nudity, sexual conduct, or sadomasochistic abuse, for the purpose of initiating or engaging in sexual acts with the child. Transmitting obscene material to a child is a Class B felony.

~~(b)~~ ~~For purposes of determining jurisdiction, the offense is committed in this state if the transmission that constitutes the offense either originates in the state or is received in the state.~~

- ~~(c) A person charged under this section shall be tried as an adult and the record of the proceeding shall not be sealed nor subject to expungement.~~
- ~~(d) Transmitting obscene material of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit to a child is a Class B felony.~~

§ 13A-6-112. Providing access or connection No Violation.

No person shall be held to have violated this article solely for providing access or connection to or from a facility, system, or network not under the control of the person, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing access or connection that do not include the creation of the communication unless:

- (1) The person is a conspirator with an entity actively involved in the creation of the obscene material.
- (2) The person knowingly distributed a communication that violates this article.
- (3) The person knowingly advertises the availability of the communication.
- (4) The person knowingly provides access or connection to a facility, system, or network engaged in the violation of this article that is owned or controlled by the person.

§ 13A-6-113. Employers No liability for employer.

No employer shall be held liable under this article for the action of an employee or agent unless the conduct of the employee or agent is within the scope of ~~his or her~~the employee's employment or agency and the employer having knowledge of the conduct, authorizes or ratifies the conduct or recklessly disregards the conduct.

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~~TITLE 13A Criminal Code~~
~~CHAPTER 6 Offenses Involving Danger to the~~
~~Person~~
~~Article 6A Solicitation of Children by Electronic~~
~~Means~~

~~§ 13A-6-120. “Child” defined.~~

~~For the purposes of this article, a child is defined as a person under 16 years of age.~~

~~§ 13A-6-121~~ § 13A-6-114. **Facilitating solicitation of unlawful sexual conduct with a child.**

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child. Any person who violates this section commits a Class C felony.

~~§ 13A-6-122~~ § 13A-6-115. **Electronic solicitation of a child.**

In addition to the provisions of Section 13A-6-69, Code of Alabama 1975, a person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone,

video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, ~~sodomy~~sexual activity, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for ~~his or her~~the defendant's benefit or for the benefit of another, is guilty of electronic solicitation of a child. Any person who violates this section commits a Class B felony.

~~§ 13A-6-123~~ § 13A-6-116. Facilitating the on-line solicitation of a child.

Any owner or operator of a computer on-line service, weblog, Internet service, or Internet bulletin board service, who knowingly aids and abets another person or who, with the purpose of facilitating or encouraging the on-line solicitation of the child, permits any person to use the service to commit a violation of this article is guilty of facilitating the on-line solicitation of a child. Any person who violates this section commits a Class B felony.

~~§ 13A-6-124~~ § 13A-6-117. Traveling to meet a child for an unlawful sex act.

Any person who travels either within this state, to this state, or from this state by any means, who attempts to do so, or who knowingly causes another to do so or to attempt to do so for the purpose of engaging in any unlawful sex act with a child, including sexual intercourse, ~~sodomy~~sexual activity, a sexual performance, obscene sexual performance, or other sexual conduct for ~~his or her~~the person's benefit or for the benefit of another shall be guilty of traveling to meet a child for an unlawful sex act. Any person who violates this section commits a Class A felony. Notwithstanding any law to the contrary, a

conviction under this section shall be considered a criminal sex offense under Section 15-20-21 [repealed], Code of Alabama 1975.

~~§ 13A-6-125~~ § 13A-6-118. Facilitating the travel of a child for an unlawful sex act.

Any person who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, ~~sodomy~~sexual activity, a sexual performance, obscene sexual performance, or other sexual conduct for ~~his or her~~the person's benefit or for the benefit of another shall be guilty of facilitating the transport of a child for an unlawful sex act. Any person who violates this section commits a Class A felony.

~~§ 13A-6-126~~ § 13A-6-119. Location of offense; jurisdiction Jurisdiction.

For purposes of determining jurisdiction of this article, the offense is committed in this state if any of the acts committed under Sections ~~13A-6-121, 13A-6-122, or 13A-6-123~~ 13A-6-114, 13A-6-115, or 13A-6-116 either originate in or are received in this state. The purpose of this section is to confer jurisdiction upon the courts of this state to the maximum extent allowable under the Constitution of the United States of America and the Constitution of Alabama of 1901.

~~§ 13A-6-127~~ § 13A-6-120. Defenses.

- (a) It shall not be a defense to prosecution under this article:
 - (1) That an undercover operative or law enforcement officer was involved in the detection and investigation of an offense; or
 - (2) That a meeting as described in this article did not occur.
- (b) An owner or operator of a computer on-line service, weblog, Internet service, or Internet bulletin board service shall not be liable for facilitating the on-line solicitation of a child for permitting an undercover operative or law

enforcement officer to use an on-line service to detect and investigate unlawful activity related to the on-line solicitation of a child.

Article 7 Domestic Violence and Related Offenses

§ 13A-6-130. Domestic violence in the first degree.

- (a) A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20 or aggravated stalking in the first degree pursuant to Section 13A-6-91; burglary in the second degree pursuant to Section 13A-7-6; kidnapping in the second degree pursuant to Section 13A-6-44; or arson in the second degree pursuant to Section 13A-7-42; and the victim is a current or former spouse, parent, child, any person with whom the defendant has or had a child in common, a present ~~or former~~ household member, or a person who has or had a dating relationship, as defined in Section 13A-6-139.1, with the defendant. Parent and child include natural, common-law, adoptive, foster relationships. Domestic violence in the first degree is a Class A felony, ~~except that the defendant shall serve a minimum term of imprisonment of one year without consideration of probation, parole, good time credits, or any other reduction in time for any second or subsequent conviction under this subsection.~~
- (b) For any subsequent conviction under this section, the defendant shall serve a minimum term of imprisonment of one year without consideration of probation, parole, good time credits, or any other reduction in time of actual imprisonment.
- ~~(b)(c) The minimum term of imprisonment imposed under subsection (a) shall be double~~ The defendant shall serve a minimum term of imprisonment of two years without consideration of probation, parole, good time credits, or any reduction in time if he or she commits violence in the first degree and in the process a defendant willfully violates a protection order issued by a court of

~~competent jurisdiction and in the process of violating the order commits domestic violence in the first degree, except if the underlying offense is aggravated stalking in the first degree.~~

- ~~(d) Mandatory minimum terms of imprisonment shall be cumulative and shall be served consecutively except that in no event may they exceed the maximum range of sentencing for the offense.~~

§ 13A-6-131. Domestic violence in the second degree.

- ~~(a) A person commits the crime of domestic violence in the second degree if the person commits ~~the crime of assault in the second degree pursuant to Section 13A-6-21; the crime of intimidating a witness pursuant to Section 13A-10-123; the crime of stalking in the first degree pursuant to Section 13A-6-90~~ 13A-6-93; aggravated stalking in the second degree pursuant to Section 13A-6-92; the crime of burglary in the second or third degree pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of criminal mischief in the first degree pursuant to Section 13A-7-21 and the victim is a current or former spouse, parent, child, any person with whom the defendant has or had a child in common, a present or former household member, or a person who has or had a dating relationship, as defined in Section 13A-6-139.1, with the defendant. Parent and child include natural, common law, adoptive, foster relationships. Domestic violence in the second degree is a Class B felony, ~~except the defendant shall serve a minimum term of imprisonment of six months without consideration of probation, parole, good time credits, or any reduction in time for any second or subsequent conviction under this subsection.~~~~
- ~~(b) For any subsequent conviction under this section, the defendant shall serve a minimum term of imprisonment of six months without consideration of probation, parole, good time credits, or any other reduction in time of actual imprisonment.~~
- ~~(c) The minimum term of imprisonment imposed under subsection (a) shall be double. The defendant shall serve a~~

minimum term of imprisonment of one year without consideration of probation, parole, good time credits, or any reduction in time of actual imprisonment if he or she commits domestic violence in the second degree and in the process a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the second degree, except if the underlying offense is aggravated stalking in the second degree.

(c) Mandatory minimum terms of imprisonment shall be cumulative and shall be served consecutively except that in no event may they exceed the maximum range of sentencing for the offense.

§ 13A-6-132. Domestic violence in the third degree.

(a) A person commits domestic violence in the third degree if the person commits ~~the crime of~~ assault in the third degree pursuant to Section 13A-6-22; ~~the crime of~~ menacing pursuant to Section 13A-6-23; ~~the crime of~~ reckless endangerment pursuant to Section 13A-6-24; ~~the crime of~~ criminal coercion pursuant to Section 13A-6-25; ~~the crime of~~ harassment pursuant to subsection (a) of Section 13A-11-8; ~~the crime of~~ criminal surveillance pursuant to Section 13A-11-32; ~~the crime of~~ harassing communications pursuant to subsection (b) of Section 13A-11-8; ~~the crime of~~ criminal trespass ~~in the third degree any degree~~ pursuant to Sections 13A-7-2, 13A-7-3, or 13A-7-4; ~~the crime of~~ criminal mischief in the second or third degree pursuant to Sections 13A-7-22 and 13A-7-23; or ~~the crime of~~ arson in the third degree pursuant to Section 13A-7-43; stalking in the second degree pursuant to Section 13A-6-94; or unlawful imprisonment in the first and second degree pursuant to Section 13A-6-41 or 13A-6-42; and the victim is a current or former spouse, parent, child, any person with whom the defendant has or had a child in common, a present ~~or former~~ household member, or a person who has or had a dating relationship, as defined in Section 13A-6-139.1, with the defendant. Parent and child include natural,

common-law, adoptive, foster relationships. Domestic violence in the third degree is a Class A misdemeanor.

- (b) The minimum term of imprisonment imposed under subsection (a) shall be 30 days without consideration of reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the third degree.
- (c) A second conviction under subsection (a) is a Class A misdemeanor, except the defendant shall serve a minimum term of imprisonment of 10 days in a city or county jail or detention facility without consideration for any reduction in time.
- (d) A third or subsequent conviction under subsection (a) is a Class C felony.
- (e) For purposes of determining second, third, or subsequent number of convictions, convictions in municipal court shall be included.
- ~~(e)~~(f) Mandatory minimum terms of imprisonment shall be cumulative and shall be served consecutively except that in no event may they exceed the maximum range of sentencing for the offense.

§ 13A-6-133. Arrest without a warrant.

- (a) For the purposes of an arrest without a warrant pursuant to Section 15-10-3, the crimes of domestic violence in the first, second, and third degrees, and domestic violence by strangulation or suffocation shall be an offense involving domestic violence. A warrantless arrest for an offense involving domestic violence made pursuant to subdivision (8) of subsection (a) of Section 15-10-3, shall include a charge of a crime of domestic violence under this article.
- (b) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, or if both parties have injuries, the officer shall evaluate each complaint separately to determine who was the predominant aggressor. If the officer determines that one person was the predominant physical aggressor, that person

may be arrested; however, a person who acts in a reasonable manner to protect himself or herself or another family or household member from domestic violence, as defined in Section 13A-6-139.1, may not be arrested for a violation of Section 13A-6-130, 13A-6-131, or 13A-6-132. In determining whether a person is the predominant aggressor the officer shall consider all of the following:

- (1) Prior complaints of domestic violence.
 - (2) The relative severity of the injuries inflicted on each person, including whether the injuries are offensive versus defensive in nature.
 - (3) The likelihood of future injury to each person.
 - (4) Whether the person had reasonable cause to believe he or she was in imminent danger of becoming a victim of any act of domestic violence, as the terms are defined in Section 13A-6-139.1.
 - (5) Whether one of the persons acted in self-defense.
- (c) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage the request for intervention by law enforcement by any party or base the decision to arrest or not to arrest on either of the following:
- (1) The specific consent or request of the victim.
 - (2) The officer's perception of the willingness of a victim of or witness to the domestic violence to testify or otherwise participate in a judicial proceeding.
- (d) In addition to victim information services required pursuant to Section 15-23-62, a law enforcement officer, at the time of initial investigation, shall give a victim of domestic violence, as those terms are defined in Section 13A-6-139.1, notice of the legal rights and remedies available on a standard form developed and distributed by the Alabama Law Enforcement Agency pursuant to subdivision (2).
- (e) The agency shall develop a "Legal Rights and Remedies Notice to Victims" that includes a general summary of the provisions of the Protection From Domestic Violence Act using language a layperson may understand and the statewide domestic violence hotline number, and shall

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distribute the notice to be used by all law enforcement agencies throughout the state.

- (f) A law enforcement officer is not liable in any civil action filed by any party for an arrest based on probable cause, enforcement of a court order, or service of process arising from an alleged incident of domestic violence, pursuant to Sections 36-1-12 and 6-5-338, as applicable.

§ 13A-6-134. Complaints of domestic violence from two or more opposing persons.

- ~~(a) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, or if both parties have injuries, the officer shall evaluate each complaint separately to determine who was the predominant aggressor. If the officer determines that one person was the predominant physical aggressor, that person may be arrested; however, a person who acts in a reasonable manner to protect himself or herself or another family or household member from domestic violence, as defined in Section 13A-6-139.1, may not be arrested for a violation of Section 13A-6-130, 13A-6-131, or 13A-6-132. In determining whether a person is the predominant aggressor the officer shall consider all of the following:~~
- ~~(1) Prior complaints of domestic violence.~~
 - ~~(2) The relative severity of the injuries inflicted on each person, including whether the injuries are offensive versus defensive in nature.~~
 - ~~(3) The likelihood of future injury to each person.~~
 - ~~(4) Whether the person had reasonable cause to believe he or she was in imminent danger of becoming a victim of any act of domestic violence, as the terms are defined in Section 13A-6-139.1.~~
 - ~~(5) Whether one of the persons acted in self defense.~~
- ~~(b) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage the request for intervention by law enforcement by any party or base the decision to arrest or not to arrest on either of the following:~~

- ~~(1) The specific consent or request of the victim.~~
 - ~~(2) The officer's perception of the willingness of a victim of or witness to the domestic violence to testify or otherwise participate in a judicial proceeding.~~
- ~~(e)~~
- ~~(1) In addition to victim information services required pursuant to Section 15-23-62, a law enforcement officer, at the time of initial investigation, shall give a victim of domestic violence, as those terms are defined in Section 13A-6-139.1, notice of the legal rights and remedies available on a standard form developed and distributed by the Alabama Law Enforcement Agency pursuant to subdivision (2).~~
 - ~~(2) The agency shall develop a "Legal Rights and Remedies Notice to Victims" that includes a general summary of the provisions of the Protection From Domestic Violence Act using language a layperson may understand and the statewide domestic violence hotline number, and shall distribute the notice to be used by all law enforcement agencies throughout the state.~~
- ~~(d) A law enforcement officer is not liable in any civil action filed by any party for an arrest based on probable cause, enforcement of a court order, or service of process arising from an alleged incident of domestic violence, pursuant to Sections 36-1-12 and 6-5-338, as applicable.~~

§ 13A-6-135. Acts, attempts, or threats of abuse.

For the purposes of Chapter 5 of Title 30, the crimes of domestic violence in the first, second, and third degrees shall be included as acts, attempts, or threats of abuse as defined pursuant to Section 30-5-2.

§ 13A-6-136. Definitions.

For the purposes of Article 6, Chapter 3 of Title 30, the definition of "domestic or family abuse" includes an incident of domestic violence in the first, second, or third degrees pursuant to this article.

§ 13A-6-137. Interference with a domestic violence emergency call.

- (a) A person commits the crime of interference with a domestic violence emergency call if he or she intentionally hinders, obstructs, disconnects, or in any way prevents the victim from calling for assistance.
- (b) Interference with a domestic violence emergency call is a Class B misdemeanor.

§ 13A-6-138. Domestic violence by strangulation or suffocation.

- (a) For the purposes of this section, the following terms have the following meanings:
 - (1) **Strangulation.** ~~Intentionally causing asphyxia by closure or compression of the blood vessels or air passages of the neck as a result of external pressure on the neck.~~ Restraining another person by the neck or throat with the intent to, and which does, impede the ability of the person to breathe or restricts blood circulation of such other person.
 - (2) **Suffocation.** ~~Intentionally causing asphyxia by depriving a person of air or by preventing a person from breathing through the inhalation of toxic gases or by blocking or obstructing the airway of a person, by any means other than by strangulation.~~
- (b) A person commits the crime of domestic violence by strangulation or suffocation if he or she commits an assault with intent to cause physical harm or ~~commits the crime of menacing pursuant to Section 13A-6-23,~~ harassment with contact pursuant to Section 13A-11-8(a)(1)(a) by strangulation or suffocation or attempted strangulation or suffocation against a victim, as the term is defined in Section 13A-6-139.1. Domestic violence by strangulation or suffocation is a Class B felony.
- (c) ~~Domestic violence by strangulation or suffocation is a Class B felony punishable as provided by law. For any~~

subsequent conviction under this section, the defendant shall serve a minimum term of actual imprisonment of six months without consideration of probation, parole, good time credits, or any other reduction in time.

(d) The defendant shall serve a minimum term of actual imprisonment of one year without consideration of probation, parole, good time credits, or any other reduction in time if he or she commits domestic violence by strangulation or suffocation and in the process willfully violates a protection order issued by a court of competent jurisdiction.

(e) Mandatory minimum terms of imprisonment shall be cumulative and shall be served consecutively except that in no event may they exceed the maximum range of sentencing for the offense.

§ 13A-6-139. No court costs to be assessed against victims.

Notwithstanding any other provision of law, no court costs shall be assessed against any person named as a victim of domestic violence, stalking, or sexual assault in connection with the prosecution or warrant recall of a domestic violence, stalking, or sexual assault offense.

§ 13A-6-139.1. Definitions

For the purposes of this article, the following terms shall have the following meanings:

(1) Dating relationship.

- a. A significant relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement over a period of time and on a continuing basis during the course of the relationship.
- b. A dating relationship includes the period of engagement to be married.
- c. A dating relationship does not include a casual or business relationship or a relationship that ended

more than 12 months prior to the filing of the petition for a protection order.

(2) Domestic violence. Any of the following acts committed against a victim:

- a.** Arson. Arson as defined under Sections 13A-7-40 to 13A-7-43, inclusive.
- b.** Assault. Assault as defined under Sections 13A-6-20 to 13A-6-22, inclusive.
- c.** Attempt. With the intent to commit any crime under this section or any other criminal act under the laws of this state, performing any overt act towards the commission of the offense.
- d.** Burglary. Burglary as defined under Sections 13A-7-6 to 13A-7-7.
- ~~**d.e.**~~ Child abuse. Torture or willful abuse of a child, aggravated child abuse, or chemical endangerment of a child as provided in Chapter 15, commencing with Section 26-15-1, of Title 26, known as the Alabama Child Abuse Act.
- e.f.** Criminal coercion. Criminal coercion as defined under Section 13A-6-25.
- g.** Criminal mischief. Criminal mischief as defined under Sections 13A-7-21 to 13A-7-23.
- h.** Criminal surveillance. Criminal surveillance as defined under Section 13A-11-32.
- f.i.** Criminal trespass. Entering or remaining in the dwelling or on the premises of another after having been warned not to do so either orally or in writing by the owner of the premises or other authorized person as defined under Sections 13A-7-2 to 13A-7-4.1, inclusive.
- ~~**g.j.**~~ Harassment. Harassment as defined under Section 13A-11-8.
- ~~**h.k.**~~ Kidnapping. Kidnapping as defined under Sections 13A-6-43 and 13A-6-44.
- i.** Menacing. Menacing as defined under Section 13A-6-23.

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- j. Other conduct. Any other conduct directed toward a plaintiff covered by this chapter that could be punished as a criminal act under the laws of this state.
 - k. Reckless endangerment. Reckless endangerment as defined under Section 13A-6-24.
 - l. Sexual abuse. Any sexual offenses included in Article 4, commencing with Section 13A-6-60, of Chapter 6 of this title.
 - m. Stalking. Stalking as defined under Sections 13A-6-90 to 13A-6-94, inclusive.
 - n. Theft. Knowingly obtaining or exerting unauthorized control or obtaining control by deception over property owned by or jointly owned by the plaintiff and another. Theft includes theft as defined under Sections 13A-8-1 to 13A-8-5, inclusive.
 - o. Unlawful imprisonment. Unlawful imprisonment as defined under Sections 13A-6-41 and 13A-6-42.
- (3) **Victim.** An individual who is related to the person who commits an act of domestic violence in any of the following ways:
- a. Is related by marriage to the defendant, including a common law marriage.
 - b. Had a former marriage or common law marriage with the defendant.
 - c. Has or had a child in common with the defendant regardless of whether the victim and defendant have ever been married and regardless of whether they are currently residing or have in the past resided together in the same household.
 - d. Has or had a dating relationship with the defendant.
 - e. Is a current ~~or former~~ household member. A household member is a person maintaining ~~or having maintained~~ a living arrangement with the defendant where he or she is in, or was engaged in, a romantic or sexual relationship.

- f. A relative of a current or former household member as defined in paragraph e. who also ~~lived~~ lives with the defendant.
- g. An individual who is a parent, stepparent, child, or stepchild and who is in or has maintained a living arrangement with the defendant.

§ 13A-6-139.2. Records of each domestic violence incidents.

Each agency in the state that is involved with the enforcement, monitoring, or prosecution of crimes of domestic violence shall collect and maintain records of each domestic violence incident for access by investigators preparing for bond hearings and prosecutions for acts of domestic violence.

Article 7A Domestic Violence Protection Order Enforcement Act

§ 13A-6-140. Short title — Purpose.

- (a) This article shall be known as the Domestic Violence Protection Order Enforcement Act.
- (b) The purpose of this article is to define the crime of violation of a domestic violence protection order.

§ 13A-6-141. Definitions.

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) **Domestic violence protection order.** A domestic violence protection order is any protection from abuse order issued pursuant to the Protection from Abuse Act, Sections 30-5-1 to 30-5-11, inclusive. The term includes the following:
 - a. A restraining order, injunctive order, or order of release from custody which has been issued in a circuit, district, municipal, or juvenile court in a domestic relations or family violence case;

- b. An order issued by municipal, district, or circuit court which places conditions on the pre-trial release on defendants in criminal cases, including provisions of bail pursuant to Section 15-13-190;
 - c. An order issued by another state or territory which may be enforced under Sections 30-5B-1 through 30-5B-10. Restraining or protection orders not issued pursuant to the Protection From Abuse Act, Sections 30-5-1 to 30-5-11, inclusive, must specify that a history of violence or abuse exists for the provisions of this chapter to apply.
- (2) **Violation.** The knowing commission of any act prohibited by a domestic violence protection order or any willful failure to abide by its terms.

§ 13A-6-142. Proceedings; generally—Penalties for violations of orders Violations of a Domestic Violence Protection Order.

- (a) A person commits the crime of violation of a domestic violence protection order if the person knowingly commits any act prohibited by a domestic violence protection order or willfully fails to abide by its terms. A violation of a domestic violence protection order, is a Class A misdemeanor which shall be punishable as provided by law.
- (b) A second conviction for violation of a domestic violence protection order, in addition to any other penalty or fine, shall be punishable by a minimum of 30 days imprisonment which may not be suspended. A third or subsequent conviction shall, in addition to any other penalty or fine, be punishable by a minimum sentence of 120 days imprisonment which may not be suspended.

§ 13A-6-143. Arrests for violations of article.

- (a) A law enforcement officer may arrest any person for the violation of this article if the officer has probable cause to believe that the person has violated any provision of a valid domestic violence protection order, whether temporary or permanent. The presentation of a domestic violence

protection order constitutes probable cause for an officer to believe that a valid order exists. For purposes of this article, the domestic violence protection order may be inscribed on a tangible copy or may be stored in an electronic or other medium if it is retrievable in a detectable form. Presentation of a certified copy of the domestic violence protection order is not required for enforcement or to allow a law enforcement officer to effect a warrantless arrest. If a domestic violence protection order is not presented to or otherwise confirmed by a law enforcement officer, the officer may consider other information in determining whether there is probable cause to believe that a valid domestic violence protection order exists. The law enforcement officer may arrest the defendant without a warrant although he or she did not personally see the violation. Knowledge by the officer of the existence or contents of, or both, or presentation to the officer by the complainant of, a domestic violence protection order shall constitute prima facie evidence of the validity of the order.

- (b)** If a law enforcement officer of this state determines that an otherwise valid domestic violence protection order cannot be enforced because the defendant has not been notified or served with the domestic violence protection order, the law enforcement officer shall inform the defendant of the order and allow the person a reasonable opportunity to comply with the order's provisions before enforcing the order. In the event the law enforcement officer provides notice of the domestic violence protection order to the defendant, the officer shall document this fact in the written report.

Article 8 Human Trafficking

~~§ 13A-6-150. Short title.~~

~~This article shall be known and may be cited as the Representatives Jack Williams and Merika Coleman Act.~~

§ 13A-6-151. Definitions.

As used in this article, the following terms shall have the following, or any combination of the following, meanings ascribed to them by this section:

(1) Coercion. —Any of the following:

- a. Causing or threatening to cause physical injury or mental suffering to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person or otherwise causing the person performing or providing labor or services to believe that the person or another person will suffer physical injury or mental suffering.
- b. Implementing any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in physical injury, mental suffering, or physical restraint of any person.
- c. Destroying, concealing, removing, confiscating, or withholding from the person or another person, or threatening to destroy, conceal, remove, confiscate, or withhold from the person or another person, the person's or any person's actual or purported government records, immigration documents, identifying information, or personal or real property.
- d. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal prosecution, criminal or immigration proceedings, hatred, contempt, or ridicule.
- e. Threatening to report the person or another person to immigration officials or to other law

enforcement officials or otherwise blackmailing or extorting the person or another person.

- f. Controlling a person's access to a controlled substance, as the term is defined in Section 20-2-2, Code of Alabama 1975.
- g. Rape ~~or sodomy~~ or threatened rape ~~or sodomy~~ of any person, as defined by Title 13A, Code of Alabama 1975.

(2) Deception. —Any of the following:

- a. Creating or confirming an impression of any existing fact or past event which is false and which the accused knows or believes to be false.
- b. Exerting financial control over the person or another person by placing the person or another person under the actor's control as a security or payment of a debt, if the value of the services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or the principal amount of the debt does not reasonably reflect the value of the items or services for which debt was incurred or by preventing a person from acquiring information pertinent to the disposition of the debt, referenced in this paragraph.
- c. Promising benefits or the performance of services which the accused does not intend to be delivered. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this article.
- d. Using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts, or performances, the person or another person would suffer physical injury or mental suffering.

(3) Labor servitude. —Work or service of economic or financial value which is performed or provided by

another person and is induced or obtained by coercion or deception.

- (4) **Mental suffering.** —A high degree of mental pain or emotional disturbances, such as distress, anxiety, public humiliation, or psychosomatic physical symptoms. It is more than mere disappointment, anger, resentment, wounded pride, or embarrassment and must be a direct result of the crime of human trafficking.
- (5) **Minor.** —A person under the age of 18.
- (6) **Physical injury.** —Impairment of physical condition or substantial pain.
- (7) **Sexual servitude.** —Any of the following:
 - a. Any sexual conduct as defined in subdivision (3) of Section 14-11-30, Code of Alabama 1975, for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception from a person.
 - b. Sexual conduct includes:
 - 1. Sexually explicit performances, meaning an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.
 - 2. Commercial sex acts, meaning any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.
 - 3. Acts defined in subdivision (3) of Section 14-11-30, Code of Alabama 1975.
- (8) **Trafficking victim.** —Any person, including minors, subjected to labor servitude, sexual servitude, or involuntary servitude.

§ 13A-6-152. Human trafficking in the first degree.

- (a) A person commits the crime of human trafficking in the first degree if:
- (1) ~~He or she~~The person knowingly subjects another person to labor servitude or sexual servitude through use of coercion or deception.
 - (2) ~~He or she~~The person knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.
 - (3) For purposes of this section, it is not required that the defendant have knowledge of a minor victim's age, nor is reasonable mistake of age a defense to liability under this section.
 - (4) A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the first degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person's employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring.
 - (5) Any person who obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section shall be guilty of a Class C felony.
- (b) Human trafficking in the first degree is a Class A felony.

§ 13A-6-153. Human trafficking in the second degree.

- (a) A person commits the crime of human trafficking in the second degree if:
- (1) A person knowingly benefits, financially or by receiving anything of value, from participation in a

venture or engagement for the purpose of sexual servitude or labor servitude.

- (2) A person knowingly recruits, entices, solicits, induces, harbors, transports, holds, restrains, provides, maintains, subjects, or obtains by any means another person for the purpose of labor servitude or sexual servitude.
 - (3) A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the second degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person's employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring.
 - (4) Any person who obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section shall be guilty of a Class A misdemeanor.
- (b) Human trafficking in the second degree is a Class B felony.

§ 13A-6-154. Prohibited defenses.

Evidence of the following facts or conditions shall not constitute a defense in a prosecution for human trafficking in the first or second degree, nor shall the evidence preclude a finding of a violation:

- (1) A human trafficking victim's sexual history or history of commercial sexual activity.
- (2) A human trafficking victim's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking.

- (3) Consent of or permission by a victim of human trafficking or anyone else on the victim's behalf to any commercial sex act or sexually explicit performance.
- (4) Age of consent to sex, an act defined by paragraph b. of subdivision (7) of Section 1 [i.e. Section 13A-6-151] of the definition for sexual servitude, legal age of marriage, or other discretionary age.
- (5) Mistake as to the human trafficking victim's age, even if the mistake is reasonable.

§ 13A-6-155. Penalties — Restitution to victim.

- (a) A person or entity convicted of any violation of this article shall be ordered to pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution. Restitution under this section shall include items covered under Article 4A, commencing with Section 15-18-65 of Chapter 18 of Title 15 of the Code of Alabama 1975, and any of the following:
 - (1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion.
 - (2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion.
 - (3) Cost of the investigation and prosecution, attorney's fees, and other court-related costs such as victim advocate fees.
 - (4) The greater of a. the value of the human trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA); or b. the gross income or value to the defendant of the victim's labor servitude or sexual servitude engaged in by the victim while in the human trafficking situation.
 - (5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.

- (6) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim.
- (7) Any and all other losses suffered by the victim as a result of any violation of this article.
- (b) For purposes of this section, the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

§ 13A-6-156. Penalties — Forfeiture of property.

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

§ 13A-6-157. Civil action — Damages.

An individual who is a victim of human trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages,

injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.

§ 13A-6-158. Civil action — Statute of limitation.

(a)

- (1) An action for an offense defined by this article where the victim is not a minor shall be brought within five years from the date the victim was removed or escaped from the human trafficking situation.
- (2) Any statute of limitations that would otherwise preclude prosecution for an offense involving the trafficking of a minor, or the physical or sexual abuse of a minor, shall be tolled until such time as the victim has reached the age of 18 years.
- (3) The running of the statute of limitations shall be suspended where a person entitled to bring a claim of an offense defined by this article could not have reasonably discovered the crime due to circumstances resulting from the human trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(b) Any statute of limitation period imposed for the filing of a civil action under this article will not begin to run until the plaintiff discovers both that the sex trade act occurred and that the defendant caused, was responsible for, or profited from the sex trade act.

- (1) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.
- (2) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

- (3) If the plaintiff's injury is caused by two or more acts that are part of a continuing series of sex trade acts by the same defendant, then the limitation period will not commence running until the last sex trade act in the continuing series occurs.
- (4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time when these acts occur will not be part of the time limited for the commencement of this action.

§ 13A-6-159. Permitted defenses.

In a prosecution for prostitution, or a sexually explicit performance defined in this article, of a human trafficking victim for the victim's illegal acts engaged in or performed as a result of labor servitude or sexual servitude, it shall be an affirmative defense that the person was a victim of human trafficking.

§ 13A-6-160. Authority to prosecute.

- (a) District attorneys and the Attorney General shall have concurrent authority to prosecute any criminal cases arising under this article and to perform any duty that necessarily appertains to this section.
- (b) Each violation under this article shall constitute a separate offense.

**Article 8A National Human Trafficking Resource
Center Hotline Notice**

**§ 13A-6-170. National Human Trafficking Resource
Center Hotline notices.**

- (a) All persons owning any establishment that requires a liquor license or alcoholic beverage license, and that does not also have a food or beverage permit, or both; any hotel that has been cited as a nuisance as defined in Sections 13A-12-110 to 13A-12-122, inclusive, of the Code of Alabama 1975;

any massage parlor where an employee has been cited with violating Section 45-13-41, or where the establishment has been cited as a nuisance as defined in Section 6-5-140; any airport, train station, or bus station; and any business that provides entertainment commonly called stripteasing or topless entertaining or entertainment that has employees who are not clad both above and below the waist shall post in a location conspicuous to the public at the entrance of the business or where such posters and notices are customarily posted, a poster of no smaller than 8 ½ by 11 inches in size that states the following:

“If you or someone you know is being forced to engage in any activity and cannot leave - whether it is commercial sex, housework, farm work, or any other activity - call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services.

“(1)Victims of human trafficking are protected under U.S. law.

“(2)The Toll-free Hotline is:

“a. Available 24 hours a day, 7 days a week.

“b. Operated by a nonprofit, nongovernmental organization.

“c. Anonymous and confidential.

“d. Accessible in 170 languages.

“e. Able to provide help, referral to services, training, and general information.”

This subsection shall not apply to businesses providing entertainment in theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

(b) The poster shall be available on the Internet website of all of the following:

(1) The Alabama Alcoholic Beverage Control Board where documents associated with obtaining a liquor license or alcoholic beverage license are customarily located.

(2) The Alabama Public Service Commission.

- (3) The Alabama Department of Labor.
- (c) The owners shall print the poster from any of the Internet websites in subsection (b) or ask that the poster be mailed for the cost of printing and first class postage and post the sign in compliance with subsection (a).
- (d) The Alcoholic Beverage Control Board, the Public Service Commission, and the Department of Labor shall post the sign on its Internet site in English, Spanish, and any other language deemed appropriate by the Commissioner of Labor. The owners shall obtain and post the posters in English, Spanish, and any other languages deemed appropriate by the Commissioner of Labor.
- (e) The Alcoholic Beverage Control Board, the Public Service Commission, and the Department of Labor shall provide each applicable business or establishment with notice of mandatory compliance of this section.
- (f) A person who violates this section shall be subject to a warning on the first violation and a fine not to exceed fifty dollars (\$50.00) for each subsequent violation. The violation or noncompliance with this section, and each day's continuance thereof, shall constitute a separate and distinct violation.

Article 9 Protecting Alabama's Elders Act

§ 13A-6-190. Short title.

This chapter shall be known and may be cited as the Protecting Alabama's Elders Act.

§ 13A-6-191. Definitions.

For purposes of this ~~chapter~~ article, the following terms shall have the following meanings:

(1) Abuse. — The infliction of physical pain, injury, or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health.

~~(1)~~**(2) Caregiver.** — An individual who has the responsibility for the care of an elderly person as a

result of family relationship or who has assumed the responsibility for the care of the person voluntarily, for pecuniary gain, by contract, or as a result of the ties of friendship.

~~(2)~~**(3) Deception.** —Deception occurs when a person knowingly:

- a. Creates or confirms another's impression which is false and which the defendant does not believe to be true.
- b. Fails to correct a false impression which the defendant previously has created or confirmed.
- c. Fails to correct a false impression when the defendant is under a duty to do so.
- d. Prevents another from acquiring information pertinent to the disposition of the property involved.
- e. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is not a matter of official record.
- f. Promises performance which the defendant does not intend to perform or knows will not be performed.

~~(3)~~**(4) Elderly person.** —A person 60 years of age or older.

~~(4)~~**(5) Emotional abuse.** —The intentional or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication, or isolation as punishment or as a substitute for treatment or care of any elderly person.

~~(5)~~**(6) Financial exploitation.** —The use of deception, intimidation, undue influence, force, or threat of force to knowingly obtain or exert, or knowingly attempt to obtain or exert unauthorized control over an elderly person's property with the intent to deprive the elderly person of his or her property or the breach of a fiduciary duty to an elderly person by the person's

guardian, conservator, or agent under a power of attorney which results in or could result in an unauthorized appropriation, sale, or transfer of the elderly person's property.

~~(6)~~**(7) Intimidation.** —A threat of physical or emotional harm to an elderly person, or the communication to an elderly person that he or she will be deprived of food and nutrition, shelter, property, prescribed medication, or medical care or treatment.

~~(7)~~**(8) Neglect.** —The failure of a caregiver to provide food, shelter, clothing, medical services, medication, or health care for an elderly person.

~~(8)~~**(9) Person.** —A human being.

~~(9)~~**(10) Undue influence.** —Domination, coercion, manipulation, or any other act exercised by another person to the extent that an elderly person is prevented from exercising free judgment and choice.

~~§ 13A-6-192. First degree crime of elder abuse and neglect~~Elder abuse and neglect in the first degree.

- (a) A person commits the crime of elder abuse and neglect in the first degree if he or she intentionally abuses or neglects any elderly person and the abuse or neglect causes serious physical injury to the elderly person.
- (b) Elder abuse and neglect in the first degree is a Class A felony.

~~§ 13A-6-193. Second degree crime of elder abuse and neglect~~Elder abuse and neglect in the second degree.

- (a) A person commits the crime of elder abuse and neglect in the second degree if he or she does any of the following:
 - (1) Intentionally abuses or neglects any elderly person and the abuse or neglect causes physical injury to the elderly person.
 - (2) Recklessly abuses or neglects any elderly person and the abuse or neglect causes serious physical injury to the elderly person.

- (3) Recklessly abuses or neglects ~~or emotionally abuses~~ any elderly person and the abuse or neglect causes emotional abuse to the elderly person after having been previously convicted of elder abuse and neglect in the third degree in any court.
- (b) Elder abuse and neglect in the second degree is a Class B felony.

~~§ 13A-6-194. Third degree crime of elder abuse and neglect~~Elder abuse and neglect in the third degree.

- (a) A person commits the crime of elder abuse and neglect in the third degree if he or she does any of the following:
 - (1) Recklessly abuses or neglects any elderly person and the abuse or neglect causes physical injury.
 - (2) Recklessly emotionally abuses any elderly person.
- (b) Elder abuse and neglect in the third degree is a Class A misdemeanor.

~~§ 13A-6-195. First degree financial exploitation of the elderly~~Financial exploitation of the elderly in the first degree.

- (a) The financial exploitation of an elderly person in which the value of the property taken exceeds two thousand five hundred dollars (\$2,500) constitutes financial exploitation of the elderly person in the first degree.
- (b) Financial exploitation of an elderly person in the first degree is a Class B felony.

~~§ 13A-6-196. Second degree financial exploitation of the elderly~~Financial exploitation of the elderly in the second degree.

- (a) The financial exploitation of an elderly person in which the value of the property taken exceeds five hundred dollars (\$500) but does not exceed two thousand five hundred dollars (\$2,500) constitutes financial exploitation of the elderly person in the second degree.

- (b) Financial exploitation of an elderly person in the second degree is a Class C felony.

§ 13A-6-197. ~~Third degree financial exploitation of the elderly~~Financial exploitation of the elderly in the third degree.

- (a) The financial exploitation of an elderly person in which the value of the property taken does not exceed five hundred dollars (\$500) constitutes financial exploitation of the elderly person in the third degree.
- (b) Financial exploitation of an elderly person in the third degree is a Class A misdemeanor.

§ 13A-6-198. ~~Jurisdiction for crime of financial exploitation of the elderly~~Financial exploitation of the elderly; jurisdiction.

- (a) In any prosecution brought for financial exploitation of an elderly person, the crime shall be considered to be committed in any county in which any part of the crime took place, regardless of whether the defendant was ever actually present in that county, or in the county of residence of the person who is the subject of the financial exploitation.
- (b) Any prosecution brought for financial exploitation of an elderly person shall be commenced within seven years after the commission of the offense.
- (c) It shall not be a defense to financial exploitation of an elderly person that the accused reasonably believed that the victim was not an elderly person.

§ 13A-6-199. Immunity from civil liability for reporting or investigating crime.

Any person or entity acting pursuant to this chapter in reporting or investigating any report of abuse, neglect, or financial exploitation of an elderly person, or participating in a judicial proceeding resulting therefrom, shall be immune from any civil liability that might otherwise be incurred or imposed as a result

of the report, investigation, or participation, unless the person or entity acted recklessly, in bad faith, or with malicious purpose.

§ 13A-6-200. Application of other provisions.

Nothing in this chapter shall be construed to limit the remedies available to the victim pursuant to any state law relating to domestic violence, the Adult Protective Services Act of 1976, or any other applicable law.

§ 13A-6-201. Application to physicians.

No physician, as defined under Section 34-24-50.1 of the Code of Alabama 1975, who is licensed to practice medicine in this state, shall be subject to Sections 13A-6-192, 13A-6-193, and 13A-6-194 for any acts or omissions constituting the practice of medicine.

Article 10 Bestiality

§ 13A-6-220. Definitions.

For purposes of this section, the following terms shall have the following meanings:

- (1) **Sexual conduct.** —Any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.
- (2) **Sexual contact.** —Any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal for the purpose of sexual gratification or sexual arousal of the person.

§ 13A-6-221. Bestiality.

- (a) A person commits the crime of bestiality if he or she:
 - (1) Knowingly engages in or submits to any sexual conduct or sexual contact with an animal.
 - (2) Knowingly causes, aids, or abets another in engaging in any sexual conduct or sexual contact with an animal.
 - (3) Knowingly permits any sexual conduct or sexual contact with an animal upon premises under his or her control.
 - (4) Knowingly organizes, promotes, conducts, advertises, aids, abets, observes, or performs any service furthering an act involving sexual conduct or sexual contact with an animal for a commercial or recreational purpose.
- (b) Bestiality is a Class A misdemeanor.
- (c) This article shall not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medicine practices.