

TITLE 13 A
ALABAMA CRIMINAL CODE

January 1, 2018

Chapter 1 GENERAL PROVISIONS.
Chapter 2 PRINCIPLES OF CRIMINAL LIABILITY.
Chapter 3 DEFENSES.
Chapter 4 INCHOATE CRIMES.
Chapter 5 PUNISHMENTS AND SENTENCES.

CHAPTER 1 GENERAL PROVISIONS

Section 13A-1-1 Short 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 guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, 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 manifestly designed, made, or adapted for the purposes of inflicting death or serious physical injury. The term includes, but is not limited to, a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any billy, black-jack, bludgeon, or metal knuckles.

(8) **FELONY.** An offense for which a sentence to a term of imprisonment in excess of one year is authorized by this title.

(9) MISDEMEANOR. An offense for which a sentence to a term of imprisonment not in excess of one year may be imposed.

(10) 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) PERSON. A human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental instrumentality.

(12) PHYSICAL INJURY. Impairment of physical condition or substantial pain.

(13) POSSESS. To have physical possession or otherwise to exercise dominion or control over tangible property.

(14) 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) 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) VIOLATION. An offense for which a sentence to a term of imprisonment not in excess of 30 days may be imposed.

Section 13A-1-4. When act or omission constitutes crime.

No act or omission is a crime unless made so by this title or by other applicable statute or lawful ordinance.

CHAPTER 2

PRINCIPLES OF CRIMINAL LIABILITY

13A-2-1. Definitions -- Generally.

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 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.

Section 13A-2-2 Definitions - Definitions of culpable mental state.

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 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 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 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 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. Requirements for criminal liability in general and for offenses of strict liability and of 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 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-2-5. Causal relationship between conduct and results; relationship to mental culpability.

(a) A person is criminally liable if the result would not have occurred but for his 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 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. Effect of ignorance or mistake upon liability.

(a) A person is not relieved of criminal liability for conduct because he engages in that conduct under a mistaken belief of fact unless:

(1) His 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 engages in that conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless his 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.

3A-2-7. Consent.

(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.

CHAPTER 3 DEFENSES

13A-3-1. 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 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 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 conduct or to conform his 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 body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them under circumstances that would afford a defense to a charge of crime.

13A-3-3. Immaturity.

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.

Editors’ Notes **13A-3-3 COMMENTARY**

Alabama has followed the common-law doctrine that children below the age of seven are conclusively presumed incapable of committing a crime, that children seven to 14 are merely presumed to be incapable of crime, and that children more than 14 have no presumption of incapacity. Persons over 14 are presumed to be responsible for their acts. 15-16-2.

As a practical matter the common-law rule is rarely invoked since the juvenile courts handle most youthful offenders and they are seldom prosecuted as adults in the criminal courts. Generally, after December 31, 1977, the juvenile courts have original and exclusive jurisdiction over children under 18; however, a child of 14 or more years of age at the time of the offense charged (felony) may be transferred for criminal prosecution if, after a hearing, the juvenile court finds this to be in the best interest of the child or the public. Title 12, chapter 15.

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.

Section 13A-3-23 Use of force in defense of a person.

(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, 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-3-25. Use of force in defense of premises.

(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 reasonably believes it necessary to prevent or terminate what he 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 reasonably believes it necessary to prevent the commission of arson in the first or second degree by the trespasser.

Section 13A-3-26 Use of force in defense of property other than premises.

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-3-30. Duress.

(a) It is a defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by the threat of imminent death or serious physical injury to himself or another.

(b) The defense provided by this section is unavailable if the actor intentionally or recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he 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

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 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 criminal intent, he (1) notified the person solicited of his 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 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 defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the offense that he 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) Class A misdemeanor if the offense solicited is a Class C felony.
- (5) Class B misdemeanor if the offense solicited is a Class A misdemeanor.
- (6) Class C misdemeanor if the offense solicited is a Class B misdemeanor.
- (7) Violation if the offense solicited is a Class C misdemeanor.

Editors' Notes

13A-4-1 COMMENTARY

Inchoate crimes are concerned with uncompleted criminal conduct. The “incomplete” or “formative” offenses of solicitation, conspiracy and attempt are considered dangerous because they have a tendency to ripen into more serious conduct. The mens rea, or intent, with which they are committed shows the actor to be a dangerous person. In all of them the mens rea is the same in that there is an intent that a crime be committed. The difference exists in the acts which evidence that intent.

In solicitation, the act evidencing the intent is the endeavoring, urging, advising, inciting, commanding, etc., another person to commit a crime. Many types of verbal conduct, or nonverbal conduct, may equate the required act.

In conspiracy, the act evidencing the intent that a crime be committed is the agreement with another or others to commit a crime. At common law, there had to be an intent to do something unlawful (or do a lawful act in an unlawful manner) which gave rise to an argument as to whether or not the accused had to know that the law would be violated by the acts carrying out the agreement. This was required under the conventional view, although in conflict with the general principle that mistake of law is no defense. Today conspiracy is highly statutory.

In attempt, again the principal element is the intent to commit a crime, as evidenced by some overt act toward its consummation. The offense lies between mere intent, which is not punishable, and the completed offense.

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 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 avoided the commission of the offense attempted by abandoning his 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 A misdemeanor if the offense attempted is a Class C felony.

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

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

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

Editors' Notes

13A-4-2 COMMENTARY

Much of the introductory material on inchoate crimes under the Commentary on 13A-4-1, criminal solicitation, is equally applicable to this section on attempts.

It is universally recognized, supported by a wealth of case law and statutory material, that one is criminally liable for attempting the commission of a crime even though his endeavor falls short of the ultimate intended objective. Section 13A-4-2 establishes a general provision which applies to all crimes. It affords standards as to the required intent and conduct and covers such problems as impossibility of accomplishment, abandonment of criminal intent, and a classification of punishments.

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 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 agrees has in turn agreed or will agree with another to effect the same criminal objective, he shall be deemed to have agreed with such other person, whether or not he 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 criminal purpose, he 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 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 A misdemeanor if an object of the conspiracy is a Class C felony.
- (5) Class B misdemeanor if an object of the conspiracy is a Class A misdemeanor.
- (6) Class C misdemeanor if an object of the conspiracy is a Class B misdemeanor.
- (7) Violation if an object of the conspiracy is a Class C misdemeanor.

CHAPTER 5

PUNISHMENTS AND SENTENCES

Section 13A-5-1 Applicability of provisions.

- (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-5-3. Classification of offenses.

- (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-5-6. Sentences of imprisonment for 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 must be in accordance with subsection (b) of Section 15-18-8 unless sentencing is pursuant to Section 13A-5-9.
 - (4) For a Class D felony, not more than 5 years or less than 1 year and 1 day and must be in accordance with subsection (b) of Section 15-18-8.

(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-6-65.1, 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. Sentences of imprisonment for 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-5-9. Habitual felony offenders -- Additional penalties.

(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-5-11. Fines for 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 for 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.

Section 13A-5-13 Crimes motivated by victim's race, color, religion, national origin, ethnicity, or physical or mental disability.

(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, 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, 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 perceived race, color, religion, national origin, ethnicity, 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, 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, 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, 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.

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 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).

(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.

(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 police officer, sheriff, deputy, state trooper, federal law enforcement officer, or any other state or federal peace officer of any kind, 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 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 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.

Section 13A-5-43 Trial of capital offenses; discharge of defendant; lesser included offenses; sentencing.

(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 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 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 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 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 without the possibility of parole or, in the alternative, life, 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 on a capital offense, the defendant must serve a minimum of 30 years, day for day, prior to first consideration of parole.

Section 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-5-49. Aggravating circumstances.

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.

Section 13A-5-51 Mitigating circumstances - Generally.

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 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 conduct or to conform his conduct to the requirements of law was substantially impaired; and
- (7) The age of the defendant at the time of the crime.

Section 13A-5-52 Mitigating circumstances - Inclusion of defendant's character, record, etc.

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.