

**Ala. Code 1975, § 13A-5-40(a)(14)**

**Murder of a Witness**

The defendant is charged with capital murder. The law states that the intentional murder of a witness is capital murder.

A person commits an intentional murder of a witness if he causes the death of another person and, in performing the act or acts that cause the death of that person, he intends to kill that person, when that person is subpoenaed, or has been subpoenaed, to testify, or 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, and the murder stems from, is caused by, or is related to the capacity or role of that person as a witness.

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

- (1) That (name of deceased) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased) by (state the alleged act, e.g., shooting) him;
- (3) That in committing the act(s) that caused the death of (name of deceased) the defendant intended to kill the deceased or another person;
- (4) That (name of deceased) was subpoenaed, or had been subpoenaed, to testify, or had testified in any [use as appropriate] 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;
- (5) That the murder stemmed from, was caused by, or was related to (name of deceased)'s role as a witness; and
- (6) That the defendant knew the deceased was a witness at the time.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

A person acts knowingly with respect to conduct or to a circumstance when he is aware that his conduct is of that nature or that the circumstance exists.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder of a witness, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder of a witness, then you cannot find the defendant guilty of capital murder.

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

### **Use Notes**

See *McGee v. State*, 594 So. 2d 219 (Ala. Crim. App. 1991) (statute requires that accused have knowledge of victim's status as witness), cert. denied (Ala. 1992).

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See *Fletcher v. State*, 621 So. 2d 1010 (Ala. Crim. App. 1993).

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