

LEGAL INFORMATION PACKET

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Dear Client,

The purpose of this packet is to help you better understand the criminal court system and process. This packet contains an overview of many topics. Some topics may address your issue while others do not. This packet is not a complete or comprehensive guide to the legal system.

Sincerely,

William J. Casey, II
Attorney at Law

INDEX

1. CLIENT PREPARATION CHECK LIST
2. CRIMINAL COURT PROCESS
3. BAIL BOND COMPANIES
4. EXPLANATION OF RIGHTS- MISDEMEANORS
5. EXPLANATION OF RIGHTS- FELONY
6. EXPLANATION OF RIGHTS- YOUTHFUL OFFENDER
7. YOUTHFUL OFFENDER STATUTE
8. REQUEST FOR TREATMENT AS A YOUTHFUL OFFENDER
9. DRUG COURT INFORMATION SHEET
10. MAP TO COMMUNITY CORRECTION CENTER
11. MAP TO COMMUNITY CORRECTION CENTER
12. DUI STATUTE
13. THEFT STATUTE
14. USE AND POSSESSION OF DRUG PARAPHERNALIA
15. UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE
16. POSSESSION OF MARIJUANA 1ST DEGREE
17. POSSESSION OF MARIJUANA 2ND DEGREE
18. ASSAULT 3RD DEGREE
19. HARASSMENT
20. PROBATION

CASE PREPERATION CHECK LIST

1. Stay in touch with me. Call me 3 days before court to confirm on the following
 - a. time of court
 - b. date of court
 - c. location of court
 - d. any witnesses we need
 - e. any evidence we need
 - f. our game plan (to discuss strategy)
2. Be on time
3. Dress nice
4. Be ready, know what you're going to say and be prepared to say it.
5. Be polite and courteous to everyone
6. Be confident
7. Look people in the eye
8. Do not mumble when you are speaking in court
9. Say yes sir, no sir to the Judge.
10. Know the status of your bond. Do you have a consolidated or an appearance bond?

THE CRIMINAL CASE PROCESS IN MOBILE COUNTY

DISTRICT COURT

- ARREST - The Defendant is taken into custody and goes to jail to be processed.
- ↓
- BOND - A) Bond is set or B) The Defendant has a Bond Hearing where bond is set or bond is denied.
- ↓
- ARRAIGNMENT - The Defendant pleads A) Guilty and the case is set for sentencing or B) The Defendant pleads not guilty and the case is set for 1) Trial if it is a misdemeanor or 2) A preliminary hearing if it is a Felony.
- ↓
- PRELIMINARY HEARING - The District Attorney presents evidence to the District Court Judge showing that they have enough evidence to establish Probable Cause. If they show Probable Cause the case is sent to the Grand Jury.
- ↓
- GRAND JURY - Hears evidence generally presented by the district attorney and decides if there is enough evidence to indict the Defendant of the crime.

CIRCUIT COURT

- ARRAIGNMENT - The Defendant pleads A) Guilty or B) Not Guilty.
- ↓
- STATUS - The District Attorney makes an offer, and the Parties notify the Court if the case is going to trial.
- ↓
- TRIAL - The Judge or Jury hears evidence to determine Guilty or Not Guilty.
- ↓
- SENTENCING / SENTENCING HEARING - The Court sentences the Defendant. Usually a Defendant is sentenced to probation, jail, or a combination of both. Often, Judges place other requirements on the Defendant depending on the situation. Ex. DUI School, Education Requirements, or Counseling.

IMPORTANT INFORMATION

WHAT FINES AND SENTENCES AM I FACING?

MISDEMEANOR		FELONY	
CLASS A	Up to one (1) year imprisonment in the county jail, or a fine up to \$2,000, or both.	CLASS A	Not less than ten (10) years and not more than life or ninety-nine (99) years imprisonment in the state penitentiary, and may include a fine not to exceed \$20,000.
CLASS B	Up to six (6) months imprisonment in the county jail, or a fine up to \$1,000, or both	CLASS B	Not less than two (2) years and not more than twenty (20) year imprisonment in the state penitentiary, and may include a fine not to exceed \$10,000.
CLASS C	Up to three (3) months imprisonment in the county jail, or a fine not to exceed \$500, or both.	CLASS C	Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, and may include a fine not to exceed \$5,000.

WHAT IS AN ARRAIGNMENT?

A COURT HEARING WHERE THE DEFENDANT PLEADS GUILTY OR NOT GUILTY.

WHAT IS A PRELIMINARY HEARING?

A COURT HEARING WHERE THE JUDGE HEARS EVIDENCE FROM THE DISTRICT ATTORNEY TO DETERMINE IF THERE IS ENOUGH EVIDENCE TO SEND THE CASE TO GRAND JURY. A PRELIMINARY HEARING ONLY OCCURS IN FELONY CASES.

WHAT IS YOUTHFUL OFFENDER STATUS?

A STATUS UNDER THE ALABAMA CODE (SECTION 15-19-1) WHERE A DEFENDANT WHO IS UNDER THE AGE OF 21 IS SENTENCED UNDER A SPECIAL PROVISION THAT PROTECTS THE DEFENDANT'S RECORD FROM PUBLIC VIEW.

WHAT IS PROBATION?

AFTER A DEFENDANT IS FOUND GUILTY AND SENTENCED THE JUDGE MAY PUT THE DEFENDANT ON PROBATION. PROBATION IS A STATUS WHERE THE DEFENDANT IS RELEASED FROM CUSTODY UNDER THE CONDITION THAT THEY OBEY THE LAWS OF THE STATE AND THE CONDITIONS SET BY THE JUDGE.

IMPORTANT NUMBERS

DISTRICT COURT 251-574-8411

CIRCUIT COURT 251-574-8430

BONDING COMPANIES

IF YOU HIRED A BONDING COMPANY, IT IS IMPORTANT THAT YOU KEEP IN CONTACT WITH THEM AND MAKE SURE THAT THEY KNOW YOU'RE COURT DATE(S). PLEASE SEE THE LIST BELOW FOR LOCAL AREA BONDING COMPANIES.

BAIL BOND COMPANIES

A ROLL TIDE	694-1772
A TO Z	438-9999
AAA BAIL BONDS	690-9045
AMERICAN BAIL BONDS	432-0005
BALDWIN COUNTY BONDING	937-4357
BAMA BAIL BONDS	432-2223
BEST BONDING COMPANY	432-1800
CENTRAL BONDING CO.	675-6050
DELTA BAIL BONDS	433-4666
EXIT BAIL BONDS	415-0385
FAT BOYS BAIL BONDS	432-0905
GRAHAM T BONDING CO.	690-7427
JAMES BONDS	432-2663
JUBILEE BAIL BONDS	694-0438
MCBRIDE BONDING CO. (SARALAND)	675-4280
METRO BONDING	438-9744
MOBILE ALABAMA DISCOUNT BONDS	433-6171
MOBILE BONDING CO.	433-5848
ONE HOUR BAIL BONDS	432-9777
OUTLAW BAIL BONDS	432-1999
OUTLAW BAIL BONDS (PRICHARD)	452-3008
SEYMOUR BAIL BONDS	433-0606

State of Alabama Unified Judicial System Form CR-51(front) Rev. 7/02	EXPLANATION OF RIGHTS AND PLEA OF GUILTY (Non-Habitual Offender – Felony and Misdemeanor Circuit or District Court)	Case Number
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IN THE _____ COURT OF _____, ALABAMA
 (Circuit or District) (Name of County)

STATE OF ALABAMA v. _____
 Defendant

TO THE ABOVE-NAMED DEFENDANT: The Court, having been informed that you wish to enter a plea of guilty in this case, hereby informs you of your rights as a criminal defendant.

PENALTIES APPLICABLE TO YOUR CASE

You are charged with the crime of _____, which is a Class _____ Felony Misdemeanor. The Court has been informed that you desire to enter a plea of guilty to this offense or to the crime of _____ which is a felony misdemeanor. The sentencing range for the above crime(s) is set out below:

MISDEMEANOR		FELONY	
Class A	Up to one (1) year imprisonment in the county jail, or a fine up to \$2,000, or both.	Class A	Not less than ten (10) years and not more than life or ninety-nine (99) years imprisonment in the state penitentiary, and may include a fine not to exceed \$20,000.
Class B	Up to six (6) months imprisonment in the county jail, or a fine up to \$1,000, or both.	Class B	Not less than two (2) years and not more than twenty (20) year imprisonment in the state penitentiary, and may include a fine not to exceed \$10,000.
Class C	Up to three (3) months imprisonment in the county jail, or a fine not to exceed \$500, or both.	Class C	Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, and may include a fine not to exceed \$5,000.

Crime Victims Assessment: You will also be ordered to pay an additional monetary penalty for the use and benefit of the Alabama Crime Victims Compensation Commission of not less than \$50 and not more than \$10,000 for each felony and not less than \$25 and not more than \$1,000 for each misdemeanor for which you are convicted.

This crime is also subject to the following enhancements or additional penalties as provided by law: (Provisions Checked Apply To Your Case)

Enhanced Punishment For Use Of Firearm Or Deadly Weapon: Section 13A-5-6, Ala. Code 1975, provides for the enhancement of a punishment where a "firearm or deadly weapon was used or attempted to be used in the commission of a felony." This section provides for the following punishment in such event: For the commission of a **Class A Felony**, a term of imprisonment of not less than **20 years**; For the commission of a **Class B Felony**, a term of imprisonment of not less than **10 years**; For the commission of a **Class C Felony**, at term of imprisonment of not less than **10 years**.

Enhanced Punishment for Drug Sale Near School: Section 13A-12-250, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public or private school, college, university or other educational institution, must be punished by an additional penalty of five years' imprisonment for each violation.

Enhanced Punishment For Sales Of Controlled Substance To One Under 18: Section 13A-12-215, Ala. Code 1975, provides that anyone convicted of selling, furnishing or giving away a controlled substance to one who has not yet attained the age of 18 years, shall be guilty of a Class A Felony and the punishment imposed shall not be suspended or probation granted.

Drug Demand Reduction Assessment Act and Loss of Driving Privileges: Section 13A-12-281 provides that, if you are convicted of a violation of Sections 13A-12-202, 13A-12-203, 13A-12-204, 13A-12-211, 13A-12-212, 13A-12-213, 13A-12-215 or 13A-12-231, Ala. Code 1975, you shall be assessed an additional fee of \$1,000 if you are a first-time offender or \$2,000 if you are a repeat offender under one of these sections. Collection of all or part of the penalty will be suspended if, with court approval, you enter a drug rehabilitation program and if you agree to pay for a part or all of the program costs. Upon successful completion of the program, you may apply to the court to reduce the penalty by the amount actually paid by you for participation in the program. Any suspension of the penalty can be withdrawn by the court if you fail to enroll in or successfully pursue or otherwise fail to complete an approved program. In addition, pursuant to Section 13A-12-214 (unlawful possession of marijuana in the second degree), Section 32-5A-191(a)(3) or Section 32-5A-191(a)(4)(DUI offenses involving drugs), you will lose your privilege to drive a motor vehicle for a period of six months, which shall be in addition to any suspension or revocation otherwise provided by law.

Alcohol/Drug Related Offenses: If you are convicted of an alcohol or drug-related offense, you will be required to undergo an evaluation for substance abuse. Based upon the results of any such evaluation, you will be required to complete the recommended course of education and/or treatment and to pay for the evaluation and any program to which you are referred. Failure to submit to an evaluation or failure to complete any program to which you may be referred will be considered a violation of any probation or parole you may be granted. You may also be required to attend monitoring sessions, including random drug and alcohol testing or blood, urine and/or breath, tests and to pay a fee for this service. You may request a waiver of part or all of the fees assessed if you are indigent or for any portion of time you are financially unable to pay. Community service may be ordered by the court in lieu of the monetary payment of fees by an indigent.

EXPLANATION OF RIGHTS AND PLEA OF GUILTY
(Non-Habitual Offender – Felony and Misdemeanor -- Circuit or District Court)

DNA Samples for Criminal Offenses in Section 36-18-24: Beginning May 6, 1994, Section 36-18-25(e), Ala. Code 1975, provides that, as of May 6, 1994, all persons convicted of any of the offenses set out in Section 36-18-24, shall be ordered by the court to submit to the taking of a DNA sample or samples.

DUI Offenses: Beginning October 1, 1993, if you are convicted of a DUI offense pursuant to Section 32-5A-191, Ala. Code 1975, an additional fine of \$100.00 will be assessed pursuant to Section 32-5A-191.1, Ala. Code 1975,

Drug Possession: Beginning October 1, 1995, if you are convicted in any court of this state for drug possession, drug sale, drug trafficking, or drug paraphernalia offenses as defined in Sections 13A-12-211 to 13A-12-260, inclusive, Ala. Code 1975, an additional fee of \$100.00 will be assessed pursuant to Section 36-18-7, Ala. Code 1975.

Other: _____

RIGHTS YOU HAVE AND THE WAIVER OF YOUR RIGHTS

Under the Constitution of the United States and the Constitution and laws of the State of Alabama, you have a right to remain silent and you may not be compelled to give evidence against yourself. Your attorney cannot disclose any confidential talks he/she has had with you. You do not have to answer any questions. If you do answer questions knowing that you have a right to silence, you will have waived your right to remain silent.

You have the right to enter, or stand on if previously entered, a plea of "Not Guilty" or "Not Guilty by Reason of Mental Disease or Defect," or "Not Guilty and Not Guilty by Reason of Mental Disease or Defect" and have a public trial before a duly selected jury. The jury would decide your guilt or innocence based upon the evidence presented before them. If you elect to proceed to trial, you would have the right to be present, you would have the right to have your attorney present to assist you, you would have the right to confront and cross examine your accuser(s) and all the State's witnesses, you would have the right to subpoena witnesses to testify on your behalf and to have their attendance in court and their testimony required by the court, and you would have the right to take the witness stand and to testify, but only if you chose to do so, as no one can require you to do this. If you elect to testify, you can be cross examined by the State just as any other witness is subjected to cross examination. If you elect not to testify, no one but your attorney will be allowed to comment about that fact to the jury. Your attorney is bound to do everything he/she can honorably and reasonably do to see that you obtain a fair and impartial trial.

If you elect to proceed to trial, you come to court presumed to be innocent. This presumption of innocence will follow you throughout the trial until the State produces sufficient evidence to convince the jury (or the court if the trial is non-jury) of your guilt beyond a reasonable doubt. You have no burden of proof in this case. If the State fails to meet its burden, you would be found not guilty.

If you are entering a guilty plea to a charge for which you have not yet been indicted, you are waiving indictment by a grand jury and you will be pleading guilty to a charge preferred against you by a District Attorney's Information filed with the court.

IF YOU PLEAD GUILTY, THERE WILL BE NO TRIAL. YOU WILL BE WAIVING THE RIGHTS OUTLINED ABOVE, EXCEPT YOUR RIGHTS RELATING TO REPRESENTATION BY AN ATTORNEY. THE STATE WILL HAVE NOTHING TO PROVE AND YOU WILL STAND GUILTY ON YOUR GUILTY PLEA. BY ENTERING A PLEA OF GUILTY, YOU WILL ALSO WAIVE YOUR RIGHT TO APPEAL, UNLESS (1) YOU HAVE, BEFORE ENTERING THE PLEA OF GUILTY, EXPRESSLY RESERVED THE RIGHT TO APPEAL WITH RESPECT TO A PARTICULAR ISSUE OR ISSUES, IN WHICH EVENT APPELLATE REVIEW SHALL BE LIMITED TO A DETERMINATION OF THE ISSUE OR ISSUES RESERVED, OR (2) YOU HAVE TIMELY FILED A MOTION TO WITHDRAW THE PLEA OF GUILTY AFTER PRONOUNCEMENT OF SENTENCE ON THE GROUND THAT THE WITHDRAWAL IS NECESSARY TO CORRECT A MANIFEST INJUSTICE, AND THE COURT HAS DENIED YOUR MOTION TO WITHDRAW YOUR PLEA, OR THE MOTION HAS BEEN DEEMED DENIED BY OPERATION OF LAW.

IF YOU HAVE A RIGHT TO APPEAL UNDER ONE OF THE CONDITIONS ABOVE AND YOU ARE DETERMINED BY THE COURT TO BE INDIGENT, COUNSEL WILL BE APPOINTED TO REPRESENT YOU ON APPEAL IF YOU SO DESIRE AND IF THE APPEAL IS FROM A CIRCUIT COURT JUDGMENT OR SENTENCE, A COPY OF THE RECORD AND THE REPORTER'S TRANSCRIPT WILL BE PROVIDED AT NO COST TO YOU.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS OR THE CONSEQUENCES OF PLEADING GUILTY, PLEASE LET THE COURT KNOW NOW AND FURTHER EXPLANATION WILL BE MADE.

Date

Judge

ATTORNEY'S CERTIFICATE

I certify that the above was read to the defendant by me; that I explained the penalty or penalties to the defendant, that I discussed in detail the defendant's rights and the consequences of pleading guilty; and that, in my judgment, the defendant understands the same and that he/she is knowingly, voluntarily, and intelligently waiving his/her rights and entering a voluntary and intelligent plea of guilty. I further certify to the court that I have in no way forced or induced the defendant to plead guilty and, to my knowledge, no one else has done so.

Date

Attorney

DEFENDANT'S STATEMENT OF WAIVER OF RIGHTS AND PLEA OF GUILTY

I certify to the court that my attorney has read and explained the matters set forth above; that my rights have been discussed with me in detail and fully explained; that I understand the charge or charges against me; that I understand my rights, the punishment or punishments provided by law as they may apply to my case, and I understand the consequences of pleading guilty; that I am not under the influence of any drugs, medicines, or alcoholic beverages; and I have not been threatened or abused or offered any inducement, reward, or hope or reward to plead guilty other than the terms of the plea agreement which will be stated on the record.

I further state to the court that I am guilty of the charge to which I am entering a plea of guilty, that I desire to plead guilty, that I made up my own mind to plead guilty, and that I knowingly, intelligently, and voluntarily waive my right to a trial in this case. I further state to the court that I am satisfied with my attorney's services and his/her handling of my case.

Date

Defendant

State of Alabama Unified Judicial System Form C-44A (front) Rev. 07/02	EXPLANATION OF RIGHTS OF YOUTHFUL OFFENDER AND PLEA OF GUILTY	Case Number
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IN THE _____ COURT OF _____, ALABAMA
 (Circuit, District, or Municipal) (Name of County or Municipality)

STATE OF ALABAMA
 MUNICIPALITY OF _____ v. _____
Defendant

TO THE ABOVE-NAMED DEFENDANT:

This is to inform you of your rights as a defendant in this case. The Court has determined that you are to be treated as a youthful offender. For you to be guilty of being a youthful offender in this case, the prosecutor would have to prove that you committed what would otherwise be the adult criminal offense of _____, a Class _____.

If that offense is a felony and you plead guilty to being a youthful offender, you may receive punishment of up to three (3) years' confinement in the custody of the State Department of Corrections and, in addition, may be fined in an amount up to \$ _____. You may be ordered by this Court to participate in the Boot Camp program set out in Section 15-18-8(a)(2), Ala. Code 1975.

If that offense is a misdemeanor or municipal ordinance violation and you plead guilty to being a youthful offender, you may receive punishment of imprisonment in the county/municipal jail or to hard labor for up to _____ and, in addition, may be fined in an amount up to \$ _____.

You will also be assessed court costs and may be ordered to pay restitution in an amount determined by the Court. In accordance with Section 15-23-17, Ala. Code 1975, if the adult criminal offense listed above is a felony or misdemeanor, you will be ordered to pay a victim compensation assessment of not less than \$ _____ nor more than \$ _____.

If you are charged with an alcohol or drug-related offense, and if you plead guilty or are found guilty, you will be required to undergo an evaluation for alcohol or drug abuse. Based on the results of the evaluation, you will be required to complete the recommended education or treatment program and to pay for the evaluation and education or treatment program to which you are referred. Failure to complete the recommended program, which includes paying for it and the evaluation, will be considered a violation of probation or parole. You may be required to attend monitoring sessions with a court referral officer and to pay a monitoring fee. These monitoring sessions would include random alcohol or drug testing. Any person determined to be indigent by the Court may request a waiver of all or part of the fees in this paragraph. If you become able to pay during the course of monitoring, education or treatment, or at another future date, the waiver of fees may be revoked. The Court may order you to perform community service instead of payment of the fees in this paragraph if you are indigent.

IN ENTERING A PLEA OF GUILTY IN THIS COURT, YOU ARE WAIVING A TRIAL AND THE FOLLOWING RIGHTS TO WHICH YOU ARE ENTITLED IN THE EVENT OF A TRIAL:

Under the Constitutions of the United States and the State of Alabama, you have a right or privilege not to be compelled to give evidence against yourself. In the trial of your case before the Court, you have the right to take the witness stand and to testify on your own behalf, if you so desire, but no one can require you to so testify. If you testify, you can be cross-examined by the prosecutor. You have the right to remain silent, but anything that you voluntarily say, with knowledge of your rights, may be used against you. Your conversations with your attorney are confidential and cannot, and will not, be disclosed by your attorney.

You have the right to stand trial on your plea of not guilty and have your case tried by the Court. The Court would determine whether you are guilty or whether you are innocent, based upon the evidence in the case.

In the trial of your case, your attorney could subpoena witnesses on your behalf, make legal objections to matters that your attorney felt were objectionable, cross-examine the witnesses of the prosecution, examine your own witnesses, and argue the matter before the Court. Your attorney would be bound to do everything that he or she could honorably and reasonably do to see that you obtain a fair and impartial trial.

In the trial of your case, you will come into court clothed with a presumption that you are not guilty and this presumption of innocence will follow you throughout the course of the trial until the evidence produced by the prosecution convinces the Court, beyond a reasonable doubt, of your guilt. The burden of proof is upon the prosecution to convince the Court, from the evidence in the case, that you are guilty beyond a reasonable doubt before you would be found guilty. If the prosecution does not meet such burden of proof, it will be the Court's duty to find you not guilty. You will have no burden of proof whatsoever in your trial.

You have the right to enter a plea of "guilty," "not guilty," "not guilty by reason of mental disease or defect," or "not guilty and not guilty by reason of mental disease or defect."

If you enter a plea of guilty, you will waive your right to appeal, unless (1) you have, before entering the plea of guilty, expressly reserved the right to appeal with respect to a particular issue or issues, in which event appellate review shall be limited to a determination of the issue or issues reserved, or (2) you have timely filed a motion to withdraw the plea of guilty after pronouncement of sentence on the ground that the withdrawal is necessary to correct a manifest injustice, and the court has denied your motion to withdraw your plea, or the motion has been deemed denied by operation of law.

If you have a right to appeal under one of the conditions above and you are determined by the court to be indigent, counsel will be appointed to represent you on appeal if you so desire and if the appeal is from a circuit court judgment or sentence, a copy of the record and the reporter's transcript will be provided at no cost to you.

EXPLANATION OF RIGHTS OF YOUTHFUL OFFENDER AND PLEA OF GUILTY

IF YOU PLEAD GUILTY, THERE WILL BE NO TRIAL AND YOU WILL BE WAIVING THE RIGHTS LISTED ABOVE.

The Court will go over these rights, as well as the nature of the charge and the material elements of the offense, with you. If you have any questions about any of them, upon your request, the judge will make further explanation to you.

Date

Judge

I state to the Court that I have had the matters and rights set forth above read to me, that my attorney has discussed these matters and rights with me in detail and that I, the defendant, fully understand them, that I am not under the influence of any drugs, medicines or alcoholic beverages and have not been threatened or abused or offered and inducement or hope of reward to get me to plead guilty other than _____

I further state to the Court that I am guilty as charged in this case, desire to plead guilty, and knowingly, voluntarily and intelligently waive my right to a trial of this cause.

Date

Defendant

I certify that the above rights were read to the defendant by me, that discussed such rights with the defendant, in detail, and that a copy of the rights was given to the defendant by me. Having gone over the defendant's rights and the consequences of entering a plea of guilty with the defendant, in my judgment, the defendant understands those rights and knowingly, intelligently and voluntarily waives the right to a trial and knowingly, voluntarily waives the right to a trial and knowingly, voluntarily and intelligently enters a plea of guilty.

Date

Attorney for Defendant

Youthful Offenders

The following is from the Code of Alabama 1975.

Section 15-19-1

Investigation and examination by court to determine how tried; consent of minor to trial without jury; arraignment as youthful offender.

(a) A person charged with a crime which was committed in his minority but was not disposed of in juvenile court and which involves moral turpitude or is subject to a sentence of commitment for one year or more shall, and, if charged with a lesser crime may be investigated and examined by the court to determine whether he should be tried as a youthful offender, provided he consents to such examination and to trial without a jury where trial by jury would otherwise be available to him. If the defendant consents and the court so decides, no further action shall be taken on the indictment or information unless otherwise ordered by the court as provided in subsection (b) of this section.

(b) After such investigation and examination, the court, in its discretion, may direct that the defendant be arraigned as a youthful offender, and no further action shall be taken on the indictment or information; or the court may decide that the defendant shall not be arraigned as a youthful offender, whereupon the indictment or information shall be deemed filed.

Section 15-19-6

Disposition upon adjudication.

(a) If a person is adjudged a youthful offender and the underlying charge is a felony, the court shall:

- (1) Suspend the imposition or execution of sentence with or without probation;
- (2) Place the defendant on probation for a period not to exceed three years;
- (3) Impose a fine as provided by law for the offense with or without probation or commitment;
- (4) Commit the defendant to the custody of the Board of Corrections for a term of three years or a lesser term.

(b) Where a sentence of fine is not otherwise authorized by law, then, in lieu of or in addition to any of the dispositions authorized in this section, the court may impose a fine of not more than \$1,000.00. In imposing a fine the court may authorize its payment in installments.

(c) In placing a defendant on probation, the court shall direct that he be placed under the supervision of the appropriate probation agency.

(d) If the underlying charge is a misdemeanor, a person adjudged a youthful offender may be given correctional treatment as provided by law for such misdemeanor.

Section 15-19-7

Effect of determination; records not open to public inspection; exception.

(a) No determination made under the provisions of this chapter shall disqualify any youth for public office or public employment, operate as a forfeiture of any right or privilege or make him ineligible to receive any license granted by public authority, and such determination shall not be deemed a conviction of crime; provided, however, that if he is subsequently convicted of crime, the prior adjudication as youthful offender shall be considered.

(b) The fingerprints and photographs and other records of a person adjudged a youthful offender shall not be open to public inspection; provided, however, that the court may, in its discretion, permit the inspection of papers or records.

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA

vs.

)
)
)
)
)

CRIMINAL CASE NO. _____

Defendant

REQUEST FOR TREATMENT AS A YOUTHFUL OFFENDER

Comes now the defendant in the above styled cause and represents unto the Court as follows:

1. My true name is _____ and I was born _____.
2. I completed the _____ grade in school and I can read and write English.
3. I am represented by my attorney _____ and he has discussed my case with me. I have had enough time to talk with him and I have discussed with him the facts in my case and I have discussed my constitutional rights with him. I am satisfied with the services of my said attorney and I have no complaints as to the way he has handled my case.
4. I understand that I am eligible to apply for treatment as a Youthful Offender. I understand that if I waive my right to a trial by jury and consent to be tried by the Court without a jury and treated as a Youthful Offender, the Court will cause me to be investigated and examined by the Court and the Court, in its discretion, may direct that I be arraigned and tried as a Youthful Offender.
5. I understand that if I am adjudged by the Court to be a Youthful Offender that the Court, in its sole discretion, may do any of the following:
 - (a) Suspend the imposition or execution of sentence with or without probation, or
 - (b) Place me on probation not to exceed three years, prescribing such terms of probation as the Court, in its sole discretion may proper, or
 - (c) Impose a fine as provided by law with or without probation or commitment, or
 - (d) Commit me to the custody of the Director of the Department of Corrections for the term of three years or for a lesser term, or where a sentence or fine is not otherwise authorized by law in lieu of or in addition to any such fine, the Court may also impose a fine not to exceed \$1,000.00.
6. I further understand that any promises made to me in order to persuade me to waive my right to a trial by jury and ask for treatment as a Youthful Offender are not binding upon the Court and that recommendations of the District Attorney are not binding upon the Court and I hereby declare that no such promises have been made to me.

Mobile Drug Court
111 Canal Street
Mobile, Al 36603
(251) 574-5650

What is the Mobile Drug Court?

- The Drug Court is a substance abuse treatment program.
- This program is voluntary.
- You must agree to plead guilty to your current charge(s) in order to enter.
- The program lasts for a minimum of one year.
- When you complete the program, your charge(s) will be dismissed.
- If you do not complete the program you will be sentenced according to your current charges and your past criminal convictions.

Are there any restrictions?

Yes, there are several things that will keep you from being eligible for the Drug Court program.

- You cannot have a history of violent behavior or sexual offenses.
- You cannot have been in possession of a gun or other weapon at the time of your arrest.
- You cannot be participating in a Methodone maintenance program.
- You must not have transportation or childcare problems that would interfere with your attendance at treatment or meetings.
- You must have a verifiable residence.

What will be expected of me?

- You will be expected to begin your recovery from drugs and alcohol.
- You will be expected to not use drugs and alcohol.
- You must attend treatment as scheduled, up to four times per week.
- You must attend a minimum of three NA or AA meetings per week.
- You will be tested frequently for drugs and alcohol.
- A family member must attend family group once per month.
- You must provide the Drug Court with employment and address verification.
- You must attempt to get a GED.
- You must register to vote if you are eligible.
- You must get a valid driver's license if you are able.
- You must attend all required Court hearings.
- You must pay all fees associated with your plea into the Drug Court.

Can I quit the Drug Court?

- No, once you plead into the Drug Court you are Court ordered to attend.

What happens if I do not complete the program?

- You will be sentenced for the charge(s) that you came into the Drug Court on.
- Your sentence will be based on your past and present convictions.

What are the requirements to graduate?

- You must be in the program for a minimum of one year.
- You must have a very substantial amount of "clean time".
- You must attend all required meetings and Court hearings.
- You must fulfill all of the requirements set forth by the Drug Court Judge.
- You must pay all program fees, restitution, and other Court related costs.

Every effort is made to assist you successfully complete the Drug Court Program. Some of the reasons that you will not complete this program are:

- Not showing up.
- Too many positive drug tests
- A new criminal charge

How long will it take to get into the Drug Court program after I am interviewed?

- This depends on many things, including the facts of your case. Usually it takes between four and eight weeks.

What are the treatment times?

- 8:00 a.m., 10:45 a.m.
- 5:00 p.m., 7:00 p.m.

Can I go to any treatment time that I want?

- No, you must go to the treatment time assigned to you.

What if I work?

- The Drug Court encourages you to work, and will give you a treatment time that meets your needs.

What if I do not work?

- If you do not work, you will be assigned to day treatment. Night treatment is reserved for employed persons or full-time students only.

What if I am in jail?

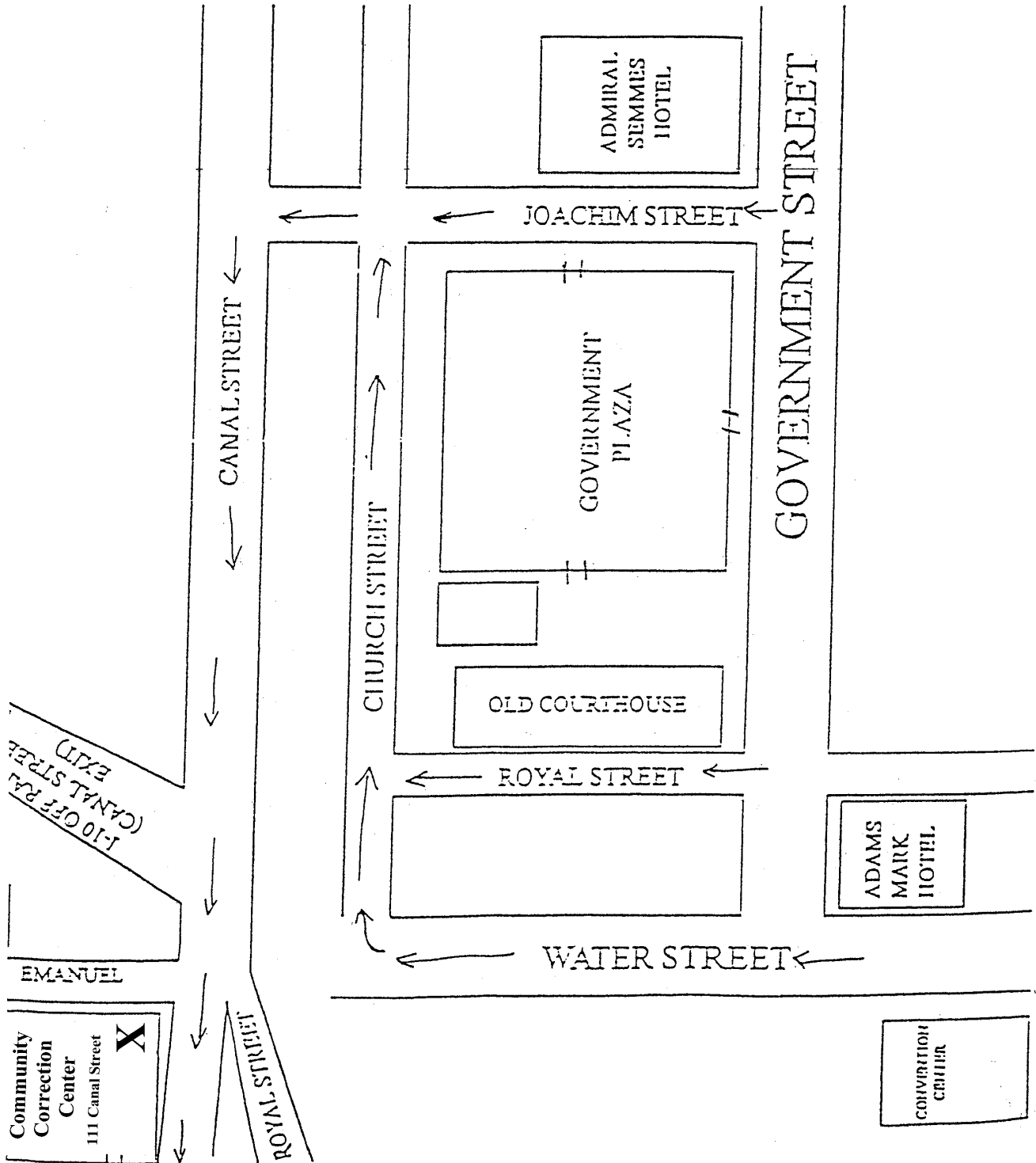
- After your interview in the jail your application will be submitted to the District Attorney for approval.
- If you are approved, you will be assigned an attorney who will come to the jail and have you sign the necessary paperwork.
- You will be given a court date in which you will plea into the Drug Court.
- After you plea you will be released. You will be required to go to day treatment until you finish the first phase of treatment.
- If you are not approved, you will receive a letter informing you. Your case will then be remanded to the Grand Jury.

How do I apply?

- Call the Drug Court for an interview at 574-5674.

Community Correction Center.
111 Canal Street, Mobile, Al 36603

Drug Court
574-5650





Directions to Community Correction Center (CCC)

be assessed a fine of double the amount prescribed by law outside a construction zone. The fine shall only be doubled for construction zone violations if construction personnel are present. The State Department of Transportation, or its agents, shall indicate the presence of construction personnel or department employees with appropriate signs. The signs, placed at the entrance of the construction zone, shall also warn of the doubled fines for speeding within a construction zone.

(b) The State Department of Transportation is hereby further authorized and empowered to promulgate and implement such administrative rules and procedures as it deems necessary to both carry out the provisions of subsection (a) of this section and to ensure the safety of private and public construction and maintenance personnel working in designated construction zones on state and interstate highways.

(c) A person subject to a penalty pursuant to Section 32-5A-176.1 shall not be assessed additional court costs on conviction.

History. Acts 1988, 1st Ex. Sess., No. 88-917; Acts 2001, No. 01-464.

Effective dates. Acts 2001, No. 01-464, effective August 1, 2001.

2001 amendments. In (a), deleted "in the same manner that they enforce normal speed limits along state and interstate highways and violators of construction zone speed limits shall be penalized as prescribed by law or ordinance

for a normal speed limit offense at the end of the third sentence, and added the fourth through seventh sentences; added (c); and made a nonsubstantive change.

Editor's notes. In 2001, the Code Commissioner, in the fourth sentence of subsection (a), changed the term "construction speed zone violation" to "construction zone speed violation" to correct a clerical error.

ARTICLE 9

SERIOUS TRAFFIC OFFENSES

§ 32-5A-190. Reckless driving.

Evidence — Inadmissible.

Where defendant's objection to portion of stipulation relating to facts concerning reckless driving went unchallenged by the prosecutor and unrecognized by the court, the evidence could not be included for review; the remaining evidence—that defendant drove an automobile and that he smelled of alcohol—was insufficient

to support the prosecutor's contention that the officer had reasonable suspicion to stop the defendant, much less to sustain a conviction for reckless driving, under this section, or for driving under the influence, in violation of § 32-5A-191. *Washburn v. Town of Blountsville*, 739 So. 2d 1146 (Ala. Crim. App. 1999).

§ 32-5A-191. Driving under the influence.

(a) A person shall not drive or be in actual physical control of any vehicle while:

- (1) There is 0.08 percent or more by weight of alcohol in his or her blood;
- (2) Under the influence of alcohol;
- (3) Under the influence of a controlled substance to a degree which renders him or her incapable of safely driving;
- (4) Under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving; or

(5) Under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving.

(b) A person who is under the age of 21 years shall not drive or be in actual physical control of any vehicle if there is .02 percentage or more by weight of alcohol in his or her blood. The Department of Public Safety shall suspend or revoke the driver's license of any person, including, but not limited to, a juvenile, child, or youthful offender, convicted or adjudicated of, or subjected to a finding of delinquency based on this subsection. Notwithstanding the foregoing, upon the first violation of this subsection by a person whose blood alcohol level is between .02 and .08, the person's driver's license or driving privilege shall be suspended for a period of 30 days in lieu of any penalties provided in subsection (e) of this section and there shall be no disclosure, other than to courts and law enforcement agencies, by any entity or person of any information, documents, or records relating to the person's arrest, conviction, or adjudication of or finding of delinquency based on this subsection.

All persons, except as otherwise provided in this subsection for a first offense, including, but not limited to, a juvenile, child, or youthful offender, convicted or adjudicated of, or subjected to a finding of delinquency based on this subsection shall be fined pursuant to this section, notwithstanding any other law to the contrary, and the person shall also be required to attend and complete a DUI or substance abuse court referral program in accordance with subsection (i).

(c) A school bus or day care driver shall not drive or be in actual physical control of any vehicle while in performance of his or her duties if there is greater than .02 percentage by weight of alcohol in his or her blood. A person convicted pursuant to this subsection shall be subject to the penalties provided by this section except that on the first conviction the Director of Public Safety shall suspend the driving privilege or driver's license for a period of one year.

(d) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a controlled substance shall not constitute a defense against any charge of violating this section.

(e) Upon first conviction, a person violating this section shall be punished by imprisonment in the county or municipal jail for not more than one year, or by fine of not less than six hundred dollars (\$600) nor more than two thousand one hundred dollars (\$2,100), or by both a fine and imprisonment. In addition, on a first conviction, the Director of Public Safety shall suspend the driving privilege or driver's license of the person convicted for a period of 90 days.

(f) On a second conviction within a five-year period, a person convicted of violating this section shall be punished by a fine of not less than one thousand one hundred dollars (\$1,100) nor more than five thousand one hundred dollars (\$5,100) and by imprisonment, which may include hard labor in the county or municipal jail for not more than one year. The sentence shall include a mandatory sentence, which is not subject to suspension or probation, of imprisonment in the county or municipal jail for not less than five days or community service for not less than 30 days. In addition the Director of Public

Safety shall revoke the driving privileges or driver's license of the person convicted for a period of one year.

(g) On a third conviction, a person convicted of violating this section shall be punished by a fine of not less than two thousand one hundred dollars (\$2,100) nor more than ten thousand one hundred dollars (\$10,100) and by imprisonment, which may include hard labor, in the county or municipal jail for not less than 60 days nor more than one year, to include a minimum of 60 days which shall be served in the county or municipal jail and cannot be probated or suspended. In addition, the Director of Public Safety shall revoke the driving privilege or driver's license of the person convicted for a period of three years.

(h) On a fourth or subsequent conviction, a person convicted of violating this section shall be guilty of a Class C felony and punished by a fine of not less than four thousand one hundred dollars (\$4,100) nor more than ten thousand one hundred dollars (\$10,100) and by imprisonment of not less than one year and one day nor more than 10 years. Any term of imprisonment may include hard labor for the county or state, and where imprisonment does not exceed three years confinement may be in the county jail. Where imprisonment does not exceed one year and one day, confinement shall be in the county jail. The minimum sentence shall include a term of imprisonment for at least one year and one day, provided, however, that there shall be a minimum mandatory sentence of 10 days which shall be served in the county jail. The remainder of the sentence may be suspended or probated, but only if as a condition of probation the defendant enrolls and successfully completes a state certified chemical dependency program recommended by the court referral officer and approved by the sentencing court. Where probation is granted, the sentencing court may, in its discretion, and where monitoring equipment is available, place the defendant on house arrest under electronic surveillance during the probationary term. In addition to the other penalties authorized, the Director of Public Safety shall revoke the driving privilege or driver's license of the person convicted for a period of five years.

Any law to the contrary notwithstanding, the Alabama habitual felony offender law shall not apply to a conviction of a felony pursuant to this subsection, and a conviction of a felony pursuant to this subsection shall not be a felony conviction for purposes of the enhancement of punishment pursuant to Alabama's habitual felony offender law.

(i) In addition to the penalties provided herein, any person convicted of violating this section shall be referred to the court referral officer for evaluation and referral to appropriate community resources. The defendant shall, at a minimum, be required to complete a DUI or substance abuse court referral program approved by the Administrative Office of Courts and operated in accordance with provisions of the Mandatory Treatment Act of 1990, Sections 12-23-1 to 12-23-19, inclusive. The Department of Public Safety shall not reissue a driver's license to a person convicted under this section without receiving proof that the defendant has successfully completed the required program.

(j) Neither reckless driving nor any other traffic infraction is a lesser included offense under a charge of driving under the influence of alcohol or of a controlled substance.

(k) Except for fines collected for violations of this section charged pursuant to a municipal ordinance, fines collected for violations of this section shall be deposited to the State General Fund; however, beginning October 1, 1995, of any amount collected over two hundred fifty dollars (\$250) for a first conviction, over five hundred dollars (\$500) for a second conviction within five years, over one thousand dollars (\$1,000) for a third conviction within five years, and over two thousand dollars (\$2,000) for a fourth or subsequent conviction within five years, the first one hundred dollars (\$100) of that additional amount shall be deposited to the Alabama Chemical Testing Training and Equipment Trust Fund, after three percent of the one hundred dollars (\$100) is deducted for administrative costs, and beginning October 1, 1997, and thereafter, the second one hundred dollars (\$100) of that additional amount shall be deposited in the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars (\$100) for administrative costs and the remainder of the funds shall be deposited to the State General Fund. Fines collected for violations of this section charged pursuant to a municipal ordinance shall be deposited as follows: The first three hundred fifty dollars (\$350) collected for a first conviction, the first six hundred dollars (\$600) collected for a second conviction within five years, the first one thousand one hundred dollars (\$1,100) collected for a third conviction, and the first two thousand one hundred dollars (\$2,100) collected for a fourth or subsequent conviction shall be deposited to the State Treasury with the first one hundred dollars (\$100) collected for each conviction credited to the Alabama Chemical Testing Training and Equipment Trust Fund and the second one hundred dollars (\$100) to the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars (\$100) for administrative costs, and the balance credited to the State General Fund. Any amounts collected over these amounts shall be deposited as otherwise provided by law.

(l) A person who has been arrested for violating this section shall not be released from jail under bond or otherwise, until there is less than the same percent by weight of alcohol in his or her blood as specified in subsection (a)(1) or, in the case of a person who is under the age of 21 years, subsection (b) hereof.

(m) Upon verification that a defendant arrested pursuant to this section is currently on probation from another court of this state as a result of a conviction for any criminal offense, the prosecutor shall provide written or oral notification of the defendant's subsequent arrest and pending prosecution to the court in which the prior conviction occurred.

(n) When any person over the age of 21 years is convicted pursuant to this section and a child under the age of 14 years was present in the vehicle at the time of the offense, the defendant shall be sentenced to double the minimum punishment that the person would have received if the child had not been present in the motor vehicle.

(o) Any person convicted of driving under the influence of alcohol, or a controlled substance, or both, or any substance which impairs the mental or physical faculties in violation of this section, a municipal ordinance adopting this section, or a similar law from another state more than once in a five year period shall have his or her motor vehicle registration for all vehicles owned by the repeat offender suspended by the Alabama Department of Revenue for the duration of the offender's driver's license suspension period, unless such action would impose an undue hardship to any individual, not including the repeat offender, who is completely dependent on the motor vehicle for the necessities of life, including any family member of the repeat offender and any co-owner of the vehicle.

History. Acts 1980, No. 80-434; Acts 1981, No. 81-803; Acts 1982, 3rd Ex. Sess., No. 82-884; Acts 1983, No. 83-620; Acts 1984, No. 84-259; Acts 1994, No. 94-590; Acts 1995, No. 95-784; Acts 1996, Nos. 96-341, 96-705; Acts 1997, No. 97-556; Acts 1999, No. 99-432; Acts 2000, No. 00-677.

Effective dates. Acts 2000, No. 2000-676, effective May 23, 2000.

2000 amendments. Added the language beginning "and the person shall also" in the undesignated paragraph of subsection (b); in subsection (f), in the second sentence, substi-

tuted "five days" for "48 consecutive hours, and substituted "30 days" for "20 days"; substituted "provided, however, that there shall be a minimum mandatory sentence of 10 days which shall be served in the county jail. The remainder of the sentence may be suspended or probated, but only if as a condition of probation" for "which may be suspended or probated, but only if" in the third sentence of subsection (h); and added subsection (o).

ALR. — Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication - post-Sitz cases. 74 ALR5th 319.

CASE NOTES

General comment.
Construction with other law.
Double jeopardy.
Elements of offense.
Evidence — Generally.
Evidence — Inadmissible.
Evidence — Insufficient.
Evidence — Sufficient.
Instructions.
Jurisdiction.
Minors.
Notice.
Probable cause.
Procedure — Pretrial.
Subsection (h).
Venue.
Illustrative cases.
Cited.

General comment.

This section does not state a substantive offense of which prior convictions are elements, but merely increases the severity of the punishment; prior convictions therefore are properly considered only for the purposes of determining whether upon conviction a defendant shall receive an enhanced sentence. *Ex parte Parker*, 740 So. 2d 432 (Ala. 1999).

Subsection (h) does not create a substantive

felony offense, rather it is an enhancement provision, applicable only to punishment. *State v. Shaver*, — So. 2d —, 1999 Ala. Crim. App. LEXIS 243 (Ala. Crim. App. Oct. 29, 1999).

This title is not misleading, and the portions of Act No. 97-556 that struck "within five years" from subsections (g) and (h) are valid. *Ex parte Boyd*, — So. 2d —, 2001 Ala. LEXIS 102 (Ala. Apr. 6, 2001).

Construction with other law.

Where the defendant, who was indicted and convicted of a felony DUI under subsection (h), should have been sentenced pursuant to the sentencing provisions of this section, not § 13A-5-9, the case was remanded for resentencing although the original sentence imposed was within the range of punishments set out in this section. *Adamson v. State*, 779 So. 2d 1286 (Ala. Crim. App. 2000).

Where the evidence established that the injured 21-year-old passenger "aided and abetted" the 16-year-old defendant in driving under the influence in violation of this section, and because his driving under the influence was an essential element of the assault on the passenger, the passenger contributed to his own assault and, as a participant in the defendant's criminal behavior, he was excluded from the

over the lumber. *Holloway v. State*, 37 Ala. App. 96, 64 So. 2d 115 (1952).

It is not necessary to a conviction that the false pretense must have been the sole, exclusive or decisive cause operating to induce the owner to part with his property; it is sufficient if he would not have parted with it in the absence of the false pretense. *Franklin v. State*, 44 Ala. App. 521, 214 So. 2d 924 (1968).

Theft based upon giving a check for which maker represented or pretended that he had sufficient funds on deposit to cover the check was not dependent upon presentation of the check for payment. *Tate v. State*, 335 So. 2d 212 (Ala. Crim. App. 1976).

— Former larceny.

Where journal brasses alleged to have been stolen were not declared by statute to be the subject of larceny without reference to value, it was necessary to aver and prove, to authorize a conviction, that the brasses were property of value. *Mitchell v. State*, 24 Ala. App. 570, 139 So. 109 (1932).

Where the defendant was a bare custodian of the property and when he fraudulently disposed of such property, all of the elements of larceny could be inferred by the jury. *Sweeney v. State*, 25 Ala. App. 220, 143 So. 586 (1932).

To constitute larceny there must be a felonious taking; if the defendant took the property in the honest belief that he had a right to do so, although this belief was erroneous, there would be no felonious intent. *Brand v. State*, 26 Ala. App. 286, 158 So. 769 (1935).

The possession of recently stolen goods can support a verdict based on this fact as an inference of guilt of larceny, as well as an inference of burglary if there is proof of breaking and entering so connected in time as to permit further inference that the larceny was the product of the breaking and entering. *Wildman v. State*, 42 Ala. App. 357, 165 So. 2d 396 (1963).

In order to constitute larceny, property must be in the possession of another at the time of alleged theft, for larceny involves an interference with possession; however, it is not necessary that the chattel be in the actual physical possession of another. *Hubbard v. State*, 374 So. 2d 427 (Ala. Crim. App. 1979).

To satisfy the requirements for larceny, the alleged thief, at some moment, must obtain complete, independent, and absolute possession and control of the item, adverse to the rights of the owner. *Smith v. State*, 409 So. 2d 927 (Ala. Crim. App. 1981).

Cited in *Kirk v. State*, 13 Ala. App. 316, 69 So. 350 (1915); *Canellos v. State*, 17 Ala. App. 278, 34 So. 396 (1919); *Shoals Nat'l Bank v. Home Indem. Co.*, 384 F. Supp. 49 (N.D. Ala. 1974); *St. Paul Fire & Marine Ins. Co. v. Veal*, 377 So. 2d 962 (Ala. 1979); *Hopkins v. Macon County Comm'n.*, 377 So. 2d 964 (Ala. 1979); *Gasser v. Morgan*, 498 F. Supp. 1154 (N.D. Ala. 1980); *Kegler v. State*, 406 So. 2d 444 (Ala. Crim. App. 1981); *Lopez v. State*, 415 So. 2d 1204 (Ala. Crim. App. 1982); *Barbee v. State*, 417 So. 2d 611 (Ala. Crim. App. 1982); *Hinds v. State*, 423 So. 2d 1382 (Ala. Crim. App. 1982); *Crowe v. State*, 435 So. 2d 1371 (Ala. Crim. App. 1983); *Sullivan v. State*, 441 So. 2d 130 (Ala. Crim. App. 1983); *Gulf States Paper Corp. v. Hawkins*, 444 So. 2d 381 (Ala. 1983); *Towns v. State*, 449 So. 2d 1273 (Ala. Crim. App. 1984); *Ex parte Williams*, 451 So. 2d 253 (Ala. 1984); *Ex parte Bates*, 461 So. 2d 5 (Ala. 1984); *Andrews v. State*, 473 So. 2d 1211 (Ala. Crim. App. 1985); *Willis v. State*, 480 So. 2d 56 (Ala. Crim. App. 1985); *Swinney v. State*, 482 So. 2d 1326 (Ala. Crim. App. 1985); *Ex parte Bain*, 484 So. 2d 383 (Ala. 1986); *Saffold v. State*, 494 So. 2d 164 (Ala. Crim. App. 1986); *Cashatt v. State Farm Mut. Auto. Ins. Co.*, 510 So. 2d 831 (Ala. Civ. App. 1987); *Stout v. State*, 547 So. 2d 894 (Ala. Crim. App. 1988); *Chisler v. State*, 553 So. 2d 654 (Ala. Crim. App. 1989); *Rutherford v. State*, 563 So. 2d 1 (Ala. Crim. App. 1989); *McElroy v. State*, 571 So. 2d 353 (Ala. Crim. App. 1990); *Turrentine v. State*, 574 So. 2d 1006 (Ala. Crim. App. 1990); *Baker v. State*, 574 So. 2d 1018 (Ala. Crim. App. 1990); *Liggans R.V. Ctr. v. John Deere Ins. Co.*, 575 So. 2d 567 (Ala. 1991); *Alderman v. State*, 615 So. 2d 640 (Ala. Crim. App. 1992); *McCorvey v. State*, 642 So. 2d 1351 (Ala. Crim. App. 1992); *Johnson v. State*, 642 So. 2d 528 (Ala. Crim. App. 1994); *Crenshaw v. State*, 712 So. 2d 1107 (Ala. Crim. App. 1997); *Liberty Nat'l Life Ins. Co. v. Daugherty*, — So. 2d —, 2002 Ala. LEXIS 227 (Ala. July 12, 2002).

§ 13A-8-3. Theft of property; first degree.

(a) The theft of property which exceeds \$1,000.00 in value, or property of any value taken from the

person of another, constitutes theft of property in the first degree.

(b) The theft of a motor vehicle, regardless of its value, constitutes theft of property in the first degree.

(c) Theft of property in the first degree is a Class B felony.

History. Acts 1977, No. 77-607; Acts 1978, No. 78-770.

Cross references. — This law is referred to in: § 6-5-271.

ALR. — Consideration of sales tax in determining value of stolen property or amount of theft. 63 ALR5th 417.

CASE NOTES

Defenses.

Double jeopardy.

Elements.

Evidence — Admissible.

Evidence — Generally.

Evidence — Inadmissible.

Evidence — Insufficient.

Evidence — Sufficient.

Fraud.

Guilty plea.

Included offenses.

Indictment.

Instructions.

Intent, knowledge.

Jurisdiction.

Jurisdiction.

Liability.

Procedure — Pretrial.

Procedure — Trial.

Reasonably prudent person.

Sentence — Generally.

Sentence — Excessive.

Sentence — Improper.

Sentence — Not excessive.

Value.

Illustrative cases.

Miscellaneous.

Cited.

Defenses.

In prosecution for theft by deception, victim's want of prudence is not a defense. *Yeager v. State*, 500 So. 2d 1260 (Ala. Crim. App. 1986).

Constable charged with theft of property who claimed that the fraud was merely a means of gaining the confidence of a man on whom he was conducting an undercover investigation, was not entitled to charges relating to the defense of public authority; even if the defendant were working undercover on an investigation of another officer, defrauding an insurance company was not a reasonable means to investigate that officer for drug-related offenses. *Aucoin v. State*, 548 So. 2d 1053 (Ala. Crim. App. 1989).

Defendant was entitled to a jury charge incorporating the "honest belief" defense as set forth in § 13A-8-12; jury should decide whether defendant did in fact honestly believe that he had claim to the insurance money. *Ex parte Wood*, 564 So. 2d 860 (Ala. 1990).

Double jeopardy.

A previous conviction for theft of the victim's automobile bars a subsequent prosecution for murder of that same victim during the course of robbing that victim of property other than the automobile where the taking of all the property occurred as part of the same criminal and factual transaction; the prosecution of the defendant for the capital offense of murder-robbery after his conviction for theft violated established principles of former jeopardy. *Connolly v. State*, 539 So. 2d 436 (Ala. Crim. App. 1988).

Prosecution and conviction for theft and possession of burglar's tools where the offenses arose from the same conduct did not constitute double jeopardy. *French v. State*, 687 So. 2d 202 (Ala. Crim. App. 1995), modified on other grounds, 687 So. 2d 205 (Ala. 1996).

Cited in *Adkins v. State*, 291 Ala. 695, 287 So. 2d 451 (1973); *Johnson v. State*, 549 So. 2d 636 (Ala. Crim. App. 1989); *Ingram v. State*, 552 So. 2d 169 (Ala. Crim. App. 1989); *Qualls v. State*, 555 So. 2d 1158 (Ala. Crim. App. 1989); *Griggers v. State*, 560 So. 2d 1098 (Ala. Crim. App. 1989); *Lane v. State*, 564 So. 2d 90 (Ala. Crim. App. 1990); *Spinks v. State*, 564 So. 2d 1043 (Ala. Crim. App. 1990); *Haynes v. State*, 574 So. 2d 893 (Ala. Crim. App. 1990); *Braxton v. State*, 574 So. 2d 1043 (Ala. Crim. App. 1990); *Hardy v. State*, 578 So. 2d 685 (Ala. Crim. App. 1991); *Fields v. State*, 582 So. 2d 596 (Ala. Crim. App. 1991); *Taylor v. State*, 585 So. 2d 251 (Ala. Crim. App. 1991); *Green v. State*, 586 So. 2d 54 (Ala. Crim. App. 1991); *Garrick v. State*, 589 So. 2d 760 (Ala. Crim. App. 1991); *Wearry v. State*, 589 So. 2d 803 (Ala. Crim. App. 1991); *Green v. State*, 602 So. 2d 457 (Ala. Crim. App. 1992); *Peters v. State*, 602 So. 2d 479 (Ala. Crim. App. 1992); *Grubbs v. State*, 602 So. 2d 498 (Ala. Crim. App. 1992); *Lyde v. State*, 605 So. 2d 1255 (Ala. Crim. App. 1992); *Finley v. State*, 606 So. 2d 198 (Ala. Crim. App. 1992); *Gandy v. State*, 610 So. 2d 1242 (Ala. Crim. App. 1992); *White v. State*, 611 So. 2d 439 (Ala. Crim. App. 1992); *Burks v. State*, 611 So. 2d 487 (Ala. Crim. App. 1992); *Maddox v. State*, 620 So. 2d 132 (Ala. Crim. App. 1993); *Madden v. State*, 624 So. 2d 1082 (Ala. Crim. App. 1993); *Lane v. State*, 625 So. 2d 1178 (Ala. Crim. App. 1993); *Germany v. State*, 630 So. 2d 132 (Ala. Crim. App. 1993); *Barnett v. State*, 639 So. 2d 527 (Ala. Crim. App. 1993); *Nye v. State*, 639 So. 2d 1383 (Ala. Crim. App. 1993); *Anderson v. State*, 641 So. 2d 1299 (Ala. Crim. App. 1994); *Ford v. State*, 645 So. 2d 317 (Ala. Crim. App. 1994); *Broaden v. State*, 645 So. 2d 368 (Ala. Crim. App. 1994); *Wilson v. State*, 659 So. 2d 970 (Ala. Crim. App. 1994); *Spencer v. State*, 659 So. 2d 1000 (Ala. Crim. App. 1994); *Orr v. State*, 665 So. 2d 975 (Ala. Crim. App. 1994); *Hunt v. Tucker*, 875 F. Supp. 1487 (N.D. Ala. 1995); *Shaw v. State*, 668 So. 2d 98 (Ala. Crim. App. 1995); *Holland v. State*, 668 So. 2d 107 (Ala. Crim. App. 1995); *Anderson v. State*, 668 So. 2d 159 (Ala. Crim. App. 1995); *Inabinett v. State*, 668 So. 2d 170 (Ala. Crim. App. 1995); *Burks v. State*, 689 So. 2d 997 (Ala. Crim. App. 1996); *Watkins v. State*, 708 So. 2d 236 (Ala. Crim. App. 1997); *Johnson v. State*, 716 So. 2d 745 (Ala. Crim. App. 1997); *Weakley v. State*, 721 So. 2d 233 (Ala. Crim. App. 1997); *Weakley v. State*, 721 So. 2d 235 (Ala. 1998); *Baxter v. State*, 723 So. 2d 810 (Ala. Crim. App. 1998); *Jones v. State*, 727 So. 2d 866 (Ala. Crim. App. 1998); *Bandy v. State*, 727 So. 2d 892 (Ala. Crim. App. 1998).

§ 13A-12-212. Unlawful possession of a controlled substance.

(a) A person commits the crime of unlawful possession of controlled substance if:

(1) Except as otherwise authorized, he possesses a controlled substance enumerated in Schedules I through V.

(2) He obtains by fraud, deceit, misrepresentation or subterfuge or by the alteration of a prescription or written order or by the concealment of a material fact or by the use of a false name or giving a false address, a controlled substance enumerated in Schedules I through V.

(b) Unlawful possession of a controlled substance is a Class C felony.

History. Acts 1982, 3rd Ex. Sess., Nos. 82-839, 82-892; Acts 1987, No. 87-603.

Editor's note. Former similar law: Code 1975, §§ 20-2-70 and 20-2-76.

Cross references. — This law is referred to in: §§ 12-23-5, 13A-12-281, 13A-12-291.

CASE NOTES

Construction with other law.

Control.

Defenses.

Double jeopardy.

Duty of defendant.

Elements.
 Evidence — Admissible.
 Evidence — Generally.
 Evidence — Inadmissible.
 Evidence — Insufficient.
 Evidence — Sufficient.
 Fines.
 Guilty plea.
 Included offenses.
 Instructions.
 Intent, knowledge.
 Issue of law or fact.
 Jurors.
 Pleadings.
 Possession.
 Probable cause.
 Procedure — Pretrial.
 Procedure — Trial.
 Requirements.
 Search and seizure.
 Sentence — Excessive.
 Sentence — Not excessive.
 Separate or multiple offenses.
 Standing.
 When applicable.
 Illustrative cases.
 Cited.

Construction with other law.

Under the "Drug Crimes Amendments Act of 1987" possession of marijuana is defined in §§ 13A-12-213 (felony) and 13A-12-214 (misdemeanor), and under either section, is a separate offense from the unlawful possession of controlled substances defined in § 13A-12-212. *English v. State*, 603 So. 2d 1128 (Ala. Crim. App. 1992).

Under § 13A-12-281, a fine of \$1,000 was mandated for each of defendant's three convictions for first offenses under this section. *May v. State*, 729 So. 2d 362 (Ala. Crim. App. 1998).

There is no ambiguity in the word "possession" because subdivision (a)(5) clearly provides that a vehicle that has been used, or that is intended to be used, in any manner to facilitate the possession of a controlled substance is subject to forfeiture and the plain language of subdivision (a)(5) must be enforced. *Ex parte Dorough*, 773 So. 2d 1001, 2000 Ala. LEXIS 12 (Ala. 2000).

Control.

While some degree of dominion and control over the contraband is a necessary prerequisite to conviction, it is not necessary that this control exist at the time of the arrest. *Hamilton v. State*, 496 So. 2d 100 (Ala. Crim. App. 1986).

Defenses.

The record revealed that defendant presented insufficient evidence to raise a jury question on the issue of entrapment; hence the burden of proof never shifted to the state to demonstrate defendant's predisposition to commit the offenses charged; although defendant testified that he would never have bought the drugs if officer had not instigated the buys, evidence that the government agent sought out or initiated contact with the defendants, or was the first to propose the illicit transaction, has been held to be insufficient to meet the defendant's burden. *Thompson v. State*, 575 So. 2d 1238 (Ala. Crim. App. 1991).

It is no defense to a charge for possession under this section that it violates the defendant's right to the free exercise of religion, which the defendant alleged included the worship of plants as gods and the religious practice of using the marijuana and psilocybin. *Rheark v. State*, 601 So. 2d 135 (Ala. Crim. App. 1992).

Double jeopardy.

Where there is but a single point of control in time and place over several types of controlled substances, only a single offense has been committed, the offense of possession of controlled substances, and only one conviction is authorized. Here, the jury found appellant guilty of felony possession of marijuana, thereby completing the offense for purposes of § 20-2-70(a). A second prosecution for possession of cocaine, which arose at the same point in time and place as the felony possession of marijuana, was, in effect, a second prosecution for the same offense (possession of controlled sub-

trafficking arising out of his simultaneous possession of diazepam, marijuana, and cocaine were not violative of the double jeopardy clause's protection from multiple punishments for the same offense and were not prohibited by § 15-3-8. *Sears v. State*, 479 So. 2d 1308 (Ala. Crim. App. 1985).

The offenses of distribution and possession of a controlled substance have neither identical statutory elements, nor is one a lesser-included offense of the other, where the two charges concern different cocaine, although the defendant had apparently been in possession of all of this illegal substance when he made the initial sale. The retention of the rest of the cocaine was not a part of the criminal act of the sale, as the defendant could have subsequently sold this remaining cocaine or he could have used it himself, either of which would have constituted a criminal act separate from the original sale. *Watford v. State*, 611 So. 2d 1170 (Ala. Crim. App. 1992).

Statute had no language prohibiting a prosecutor from aggregating separate supplies of the specific controlled substance possessed by a defendant. *Townsend v. State*, — So. 2d —, 2001 Ala. Crim. App. LEXIS 328 (Ala. Crim. App. Dec. 21, 2001).

Standing.

In a prosecution under this section, where on being confronted by law enforcement officers defendant handed his friend some jewelry and an aluminum package containing cocaine, defendant had no standing to object to the search of the friend's person. *Wright v. State*, 434 So. 2d 287 (Ala. Crim. App. 1983).

When applicable.

The defendant's conviction of possession of marijuana was reversed where the defendant was not correctly charged under § 13A-12-213 or § 13A-12-214. Because these are statutes dealing solely with possession of marijuana, an individual cannot be charged with possession of marijuana in violation of § 13A-12-212, the general possession statute. *Ransaw v. State*, 568 So. 2d 363 (Ala. Crim. App. 1990).

Because § 13A-12-212 is a general provision, §§ 13A-12-213 and 13A-12-214 as specific provisions would control and the defendant should have been indicted under the specific statute rather than the general statute; to permit the state to charge a defendant with possession of marijuana under the general possession statute would be vest in the prosecutor the discretion to nullify the intent of the legislature. In order to be charged with possession of marijuana, a defendant must be charged under § 13A-12-213 or § 13A-12-214. *Pool v. State*, 570 So. 2d 1260 (Ala. Crim. App. 1990).

Illustrative cases.

The degree of possession, whether a felony or a misdemeanor, depends upon the use of the prohibited substance and if it is for personal use only, the crime is a misdemeanor, otherwise a felony. *Powers v. State*, 49 Ala. App. 690, 275 So. 2d 369 (1973).

Cited in *Van Nostrand v. State*, 56 Ala. App. 141, 319 So. 2d 760 (1975); *Soriano v. State*, 527 So. 2d 1367 (Ala. Crim. App. 1988); *Mack v. State*, 536 So. 2d 971 (Ala. Crim. App. 1988); *Stokes v. State*, 552 So. 2d 144 (Ala. 1989); *State v. Patterson*, 552 So. 2d 181 (Ala. Crim. App. 1989); *State v. Taylor*, 554 So. 2d 496 (Ala. Crim. App. 1989); *Harrell v. State*, 555 So. 2d 257 (Ala. Crim. App. 1989); *Harrell v. State*, 555 So. 2d 263 (Ala. 1989); *Looney v. State*, 563 So. 2d 3 (Ala. Crim. App. 1989); *Glass v. State*, 557 So. 2d 845 (Ala. Crim. App. 1990); *Gundrum v. State*, 563 So. 2d 27 (Ala. Crim. App. 1990); *Washington v. State*, 568 So. 2d 413 (Ala. Crim. App. 1990); *Dentmon v. State*, 568 So. 2d 416 (Ala. Crim. App. 1990); *Edwards v. State*, 570 So. 2d 252 (Ala. Crim. App. 1990); *State v. Moore*, 570 So. 2d 838 (Ala. Crim. App. 1990); *Jackson v. State*, 570 So. 2d 874 (Ala. Crim. App. 1990); *Pool v. State*, 570 So. 2d 1263 (Ala. 1990); *Jones v. State*, 572 So. 2d 504 (Ala. Crim. App. 1990); *Roberson v. State*, 572 So. 2d 1323 (Ala. Crim. App. 1990); *Haynes v. State*, 574 So. 2d 893 (Ala. Crim. App. 1990); *Lanza v. State*, 579 So. 2d 8 (Ala. Crim. App. 1990); *Harris v. State*, 580 So. 2d 33 (Ala. Crim. App. 1990); *Hawkins v. State*, 585 So. 2d 152 (Ala. Crim. App. 1990); *State v. Carpenter*, 592 So. 2d 624 (Ala. Crim. App. 1990); *Matthews v. City of Birmingham*, 581 So. 2d 15 (Ala. Crim. App. 1991); *Fields v. State*, 582 So. 2d 596 (Ala. Crim. App. 1991); *Riley v. State*, 583 So. 2d 1353 (Ala. Crim. App. 1991); *Hawkins v. State*, 585 So. 2d 154 (Ala. 1991); *Bryant v. State*, 585 So. 2d 259 (Ala. Crim. App. 1991);

Whatley v. State, 586 So. 2d 966 (Ala. Crim. App. 1991); *Tyler v. State*, 587 So. 2d 1238 (Ala. Crim. App. 1991); *McDaniel v. State*, 589 So. 2d 767 (Ala. Crim. App. 1991); *Sheridan v. State*, 591 So. 2d 129 (Ala. Crim. App. 1991); *Ex parte Carpenter*, 592 So. 2d 627 (Ala. 1991); *Jones v. State*, 593 So. 2d 155 (Ala. Crim. App. 1991); *Williams v. State*, 596 So. 2d 620 (Ala. Crim. App. 1991); *Ex parte Rivers*, 597 So. 2d 1308 (Ala. 1991); *Hansen v. State*, 598 So. 2d 1 (Ala. Crim. App. 1991); *Wright v. State*, 601 So. 2d 1095 (Ala. Crim. App. 1991); *Demunn v. State*, 627 So. 2d 1005 (Ala. Crim. App. 1991); *Thomas v. State*, 601 So. 2d 191 (Ala. Crim. App. 1992); *Grubbs v. State*, 602 So. 2d 498 (Ala. Crim. App. 1992); *Carter v. State*, 603 So. 2d 1137 (Ala. Crim. App. 1992); *Sampson v. State*, 605 So. 2d 346 (Ala. Crim. App. 1992); *Lyde v. State*, 605 So. 2d 1255 (Ala. Crim. App. 1992); \$1,113.77 U.S. Currency in Possession of *Brown v. State*, 606 So. 2d 151 (Ala. Civ. App. 1992); *Harrell v. State*, 608 So. 2d 434 (Ala. Crim. App. 1992); *Miller v. State*, 611 So. 2d 434 (Ala. Crim. App. 1992); *Bush v. State*, 611 So. 2d 503 (Ala. Crim. App. 1992); *Kirk v. State*, 612 So. 2d 1232 (Ala. Crim. App. 1992); *Warren v. State*, 624 So. 2d 669 (Ala. Crim. App. 1992); *Cummings v. State*, 642 So. 2d 488 (Ala. Crim. App. 1992); *State v. Adams*, 643 So. 2d 606 (Ala. Crim. App. 1992); *Ex parte Rowell*, 666 So. 2d 823 (Ala. 1992); *Dowdell v. State*, 615 So. 2d 1277 (Ala. Crim. App. 1993); *State v. Ross*, 615 So. 2d 1284 (Ala. Crim. App. 1993); *Jones v. State*, 616 So. 2d 949 (Ala. Crim. App. 1993); *Christmas v. State*, 624 So. 2d 684 (Ala. Crim. App. 1993); *Frazier v. State*, 624 So. 2d 719 (Ala. Crim. App. 1993); *Ex parte Wood*, 629 So. 2d 308 (Ala. Crim. App. 1993); *Sistrunk v. State*, 630 So. 2d 147 (Ala. Crim. App. 1993); *Jones v. State*, 631 So. 2d 255 (Ala. Crim. App. 1993); *Thomas v. State*, 666 So. 2d 349 (Ala. Crim. App. 1993); *State v. Tatum*, 642 So. 2d 523 (Ala. Crim. App. 1994); *Cooper v. State*, 644 So. 2d 480 (Ala. Crim. App. 1994); *Stubblefield v. State*, 645 So. 2d 320 (Ala. Crim. App. 1994); *State v. Stallworth*, 645 So. 2d 323 (Ala. Crim. App. 1994); *Broaden v. State*, 645 So. 2d 368 (Ala. Crim. App. 1994); *Moore v. State*, 650 So. 2d 966 (Ala. 1994); *Huffman v. State*, 651 So. 2d 78 (Ala. Crim. App. 1994); *Seay v. State*, 651 So. 2d 81 (Ala. Crim. App. 1994); *Tyson v. State*, 659 So. 2d 991 (Ala. Crim. App. 1994); *Karrick v. Johnson*, 659 So. 2d 77 (Ala. 1995); *Webster v. State*, 662 So. 2d 920 (Ala. Crim. App. 1995); *Campbell v. State*, 669 So. 2d 229 (Ala. Crim. App. 1995); *Gilmore v. State*, 669 So. 2d 239 (Ala. Crim. App. 1995); *Warren v. State*, 706 So. 2d 1316 (Ala. Crim. App. 1997); *Getz v. State*, 706 So. 2d 1319 (Ala. Crim. App. 1997); *Bailey v. State*, 717 So. 2d 3 (Ala. Crim. App. 1997); *Burton v. State*, 728 So. 2d 1142 (Ala. Crim. App. 1997); *Snell v. State*, 715 So. 2d 920 (Ala. Crim. App. 1998); *Williams v. State*, 716 So. 2d 753 (Ala. Crim. App. 1998); *State v. Mitchell*, 722 So. 2d 814 (Ala. Crim. App. 1998); *Snell v. State*, 723 So. 2d 105 (Ala. Crim. App. 1998); *Grace v. State*, 727 So. 2d 881 (Ala. Crim. App. 1998); *Jones v. State*, 727 So. 2d 889 (Ala. Crim. App. 1998); *Henton v. State*, 733 So. 2d 914 (Ala. Crim. App. 1998); *State v. Murray*, 733 So. 2d 945 (Ala. Crim. App. 1999); *Forte v. State*, 747 So. 2d 925, 1999 Ala. Crim. App. LEXIS 94 (Ala. Crim. App. 1999); *Glanton v. State*, 748 So. 2d 224, 1999 Ala. Crim. App. LEXIS 138 (Ala. Crim. App. 1999); *Bennett v. State*, 754 So. 2d 637, 1999 Ala. Crim. App. LEXIS 175 (Ala. Crim. App. 1999).

§ 13A-12-213. Unlawful possession of marijuana; first degree.

(a) A person commits the crime of unlawful possession of marijuana in the first degree if, except as otherwise authorized:

(1) He possesses marijuana for other than personal use; or

(2) He possesses marijuana for his personal use only after having been previously convicted of unlawful possession of marijuana in the second degree or unlawful possession of marijuana for his personal use only.

(b) Unlawful possession of marijuana in the first degree is a Class C felony.

History. Acts 1982, 3rd Ex. Sess., Nos. 82-839, 82-892; Acts 1987, No. 87-603.

Sentence — Generally.

Where, based on a prior record, defendant was convicted of possession of marijuana in the first degree, and was sentenced to five years in the state penitentiary, because the state did not meet its burden of proving that defendant validly waived his right to counsel before pleading guilty to the first possession charge, the conviction on that charge could not be used to elevate the crime in this case. *Ex parte Reese*, 620 So. 2d 579 (Ala. 1993).

Felony drug convictions that occurred before October 21, 1987, should be considered when applying the Habitual Felony Offender Act. *Ward v. State*, 630 So. 2d 157 (Ala. Crim. App. 1993).

The trial court did not err by failing to orally inform the appellant of the maximum fine for first-degree marijuana possession when the record reflected that the appellant was informed of the possible fine range when he signed the guilty plea form. *Lasner v. State*, 689 So. 2d 1004 (Ala. Crim. App. 1996).

For sentence enhancement to be proper based on a coconspirator's possession of a firearm during the offense, (1) the possessor must be charged as a coconspirator, (2) the coconspirator must be found to have been possessing a firearm in furtherance of the conspiracy, and (3) the defendant who is to receive the enhanced sentence must have been a member of the conspiracy at the time of the firearm possession. *Browder v. State*, 728 So. 2d 1108 (Ala. 1997).

When applicable.

The defendant's conviction of possession of marijuana was reversed where the defendant was not correctly charged under § 13A-12-213 or § 13A-12-214. Because there are statutes dealing solely with possession of marijuana, an individual cannot be charged with possession of marijuana in violation of § 13A-12-212; the general possession statute. *Ransaw v. State*, 568 So. 2d 363 (Ala. Crim. App. 1990).

Because § 13A-12-212 is a general provision, §§ 13A-12-213 and 13A-12-214, as specific provisions, would control and the defendant should have been indicted under the specific statute rather than the general statute; to permit the state to charge a defendant with possession of marijuana under the general possession statute would be vest in the prosecutor the discretion to nullify the intent of the legislature. In order to be charged with possession of marijuana, a defendant must be charged under § 13A-12-213 or § 13A-12-214. *Pool v. State*, 570 So. 2d 1260 (Ala. Crim. App.), *aff'd*, 570 So. 2d 1263 (Ala. 1990).

Cited in *Ex parte Alphonse*, 261 Ala. 177, 73 So. 2d 727 (1954); *House v. State*, 350 So. 2d 752 (Ala. Crim. App. 1977); *German v. State*, 492 So. 2d 622 (Ala. Crim. App. 1985); *Harrell v. State*, 555 So. 2d 263 (Ala. 1989); *Davis v. State*, 555 So. 2d 309 (Ala. Crim. App. 1989); *Shivers v. State*, 555 So. 2d 338 (Ala. Crim. App. 1989); *Crenshaw v. State*, 563 So. 2d 16 (Ala. Crim. App. 1989); *Key v. State*, 566 So. 2d 251 (Ala. Crim. App. 1990); *Washington v. State*, 568 So. 2d 413 (Ala. Crim. App. 1990); *Watley v. State*, 568 So. 2d 857 (Ala. 1990); *Pool v. State*, 570 So. 2d 1263 (Ala. 1990); *Robinson v. State*, 588 So. 2d 944 (Ala. Crim. App. 1991); *State v. Brown*, 591 So. 2d 113 (Ala. Crim. App. 1991); *Crear v. State*, 591 So. 2d 530 (Ala. Crim. App. 1991); *Atwell v. State*, 594 So. 2d 202 (Ala. Crim. App. 1991); *Gray v. State*, 600 So. 2d 1076 (Ala. Crim. App. 1992); *Sheffield v. State*, 606 So. 2d 183 (Ala. Crim. App. 1992); *White v. State*, 611 So. 2d 439 (Ala. Crim. App. 1992); *Bamberg v. State*, 611 So. 2d 450 (Ala. Crim. App. 1992); *Duckworth v. State*, 612 So. 2d 1284 (Ala. Crim. App. 1992); *Lloyd v. State*, 629 So. 2d 658 (Ala. Crim. App. 1992); *Ex parte Grantham*, 613 So. 2d 1260 (Ala. 1993); *State v. Richardson*, 616 So. 2d 400 (Ala. Crim. App. 1993); *Jones v. State*, 631 So. 2d 285 (Ala. Crim. App. 1993); *Robinson v. State*, 649 So. 2d 1331 (Ala. Crim. App. 1994); *Sullivan v. State*, 651 So. 2d 1138 (Ala. Crim. App. 1994); *Jones v. State*, 665 So. 2d 982 (Ala. Crim. App. 1995); *Ex parte Tucker*, 667 So. 2d 1339 (Ala. 1995); *Money v. State*, 717 So. 2d 38 (Ala. Crim. App. 1997); *Johnson v. State*, 719 So. 2d 272 (Ala. Crim. App. 1998).

§ 13A-12-214. Unlawful possession of marijuana; second degree.

(a) A person commits the crime of unlawful possession of marijuana in the second degree if, except

as otherwise authorized, he possesses marijuana for his personal use only.

(b) Unlawful possession of marijuana in the second degree is a Class A misdemeanor.

History. Acts 1982, 3rd Ex. Sess., Nos. 82-839, 32-892; Acts 1987, No. 37-603.

Editor's note. Former similar law: Code 1975, §§ 20-2-70 and 20-2-76.

Cross references. — This law is referred to in: §§ 12-23-5, 13A-12-291.

CASE NOTES**Burden of proof.**

Construction with other law.

Defenses.

Elements.

Evidence — Inadmissible.

Evidence — Insufficient.

Evidence — Sufficient.

Included offenses.

Jurisdiction.

Legislative intent.

Possession.

Probable cause.

Probation.

Procedure — Pretrial.

Search and seizure.

Sentence — Generally.

Time limitations.

When applicable.

Cited.

Burden of proof.

Showing possession for personal use is a matter for defense. The burden of adducing evidence on this issue is upon the accused just as in a prosecution for the possession of prescribed drugs, the burden is on the accused to show that the drugs were lawfully prescribed. *Roberts v. State*, 349 So. 2d 89 (Ala. Crim. App. 1977).

Construction with other law.

Subsection (a)(2) of § 13A-12-213 clearly evidences the legislature's intent that a person have only one misdemeanor possession of marijuana conviction. However, there is no indication in either § 13A-12-213 or § 13A-12-214 that a defendant's one misdemeanor possession conviction cannot occur after a sale offense (or after a felony possession of marijuana conviction under § 13A-12-213(a)(1) or former § 20-2-70 for that matter). Had the legislature intended such a result, it could have included the offenses of sale of marijuana and felony possession of marijuana in § 13A-12-213(a)(2). *Pool v. State*, 570 So. 2d 1260 (Ala. Crim. App.), *aff'd*, 570 So. 2d 1263 (Ala. 1990).

Because the Demand Reduction Assessment Act, Ala. Code § 13A-12-281(a), applied to Ala. Code § 13A-12-213, possession of marijuana, first degree, but not to Ala. Code § 13A-12-214, possession of marijuana, second degree, the trial court erred in doubling defendant's penalty based upon his conviction for possession of marijuana, second degree. *Freeman v. State*, — So. 2d —, 2002 Ala. Crim. App. LEXIS 55 (Ala. Crim. App. Mar. 1, 2002).

Defenses.

It is no defense to a charge for possession under this section that it violates the defendant's right to the free exercise of religion, which the defendant alleged included the worship of plants as gods and the religious practice of using the marijuana and psilocybin. *Rheurk v. State*, 601 So. 2d 135 (Ala. Crim. App. 1992).

Elements.

The three elements necessary to prove possession of marijuana are: (1) actual or potential physical control, (2) intention to exercise dominion, and (3) external manifestations of intent and control. *Anderson v. State*, 533 So. 2d 694 (Ala. Crim. App. 1988).

There is no offense outlined in either § 13A-12-213 or § 13A-12-214 whose enacting clause defines the proscribed conduct merely in terms of "possession of marijuana." The phrases "for other than

punishment of three months; the appellate court remanded his case for resentencing pursuant to § 13A-5-7(a)(3). *Rump v. State*. — So. 2d —, 2001 Ala. Crim. App. LEXIS 168 (Ala. Crim. App. Aug. 31, 2001).

Illustrative cases.

Under a former similar provision, one who disturbed church members between services was guilty of disturbing religious worship; this section was not limited to disturbances during the actual services. *Ellis v. State*, 10 Ala. App. 252, 65 So. 412 (1914).

Principal acting within his powers when he informed former teacher she could remain at the school only as a visitor. *Jones v. State*, 38 Ala. App. 510, 89 So. 2d 110 (1956).

Where the defendant admitted taking action against police officers and claimed that even if he had done those things they would not constitute "disorderly conduct," because he was in a rural area and therefore could not have had the statutorily required intent to cause public inconvenience, whether the defendant is within a city when he strikes or shoves a police officer has no bearing on the issue of disorderly conduct. *Ex parte Thomas*, 666 So. 2d 855 (Ala. 1995).

Based on defendant's act of repeatedly blowing his horn and shouting obscenities at police officer—who had blocked traffic in both directions after observing another man urinating in the street—in an area where many people were nearby and causing a disturbance to the extent that people began to assemble in the road and their yards, there was no error when the trial court denied the appellant's motion for a judgment of acquittal. *Pitts v. City of Auburn*, 695 So. 2d 236 (Ala. Crim. App. 1996).

City police officers had arguable probable cause to arrest defendant for violation of this section, where defendant was preaching on a public sidewalk so loudly that he could be heard across a busy traffic intersection, and even after other citizens complained, he refused to stop preaching. *Redd v. City of Enterprise*, 140 F.3d 1378 (11th Cir. 1998).

Miscellaneous.

Complaint of disturbance "by conduct calculated to provoke a breach of the peace" under Acts 1959, p. 108, was too vague when not amplified by further particulars. *Mitchell v. State*, 41 Ala. App. 254, 130 So. 2d 198 (1961).

Trial court erred in overruling defendant's demurrer (now motion to dismiss) to a complaint for disturbing the peace under Acts 1959, p. 508, because the alternative allegation that defendant "disturbed the peace of others . . . by conduct calculated to provoke a breach of the peace" was too uncertain in laying the quo modo of the alleged disturbance. *Mitchell v. State*, 41 Ala. App. 254, 130 So. 2d 198 (1961).

Cited in *Banks v. State*, 11 Ala. App. 176, 65 So. 667 (1914); *Zellner v. Lingo*, 218 F. Supp. 513 (M.D. Ala. 1963); *Houser v. Hill*, 278 F. Supp. 920 (M.D. Ala. 1968); *Ingram v. Steven Robert Corp.*, 547 F.2d 1260 (5th Cir. 1977); *Driskill v. State*, 376 So. 2d 678 (Ala. 1979); *Hill v. State*, 381 So. 2d 206 (Ala. Crim. App. 1979); *Frolik v. State*, 392 So. 2d 845 (Ala. Crim. App. 1980); *Frolik v. State*, 392 So. 2d 846 (Ala. 1981); *Mosley v. City of Auburn*, 428 So. 2d 165 (Ala. Crim. App. 1982); *Nikolic v. City of Montgomery*, 441 So. 2d 997 (Ala. Crim. App. 1983); *Hardy v. State*, 455 So. 2d 265 (Ala. Crim. App. 1984); *Timmons v. City of Montgomery*, 658 F. Supp. 1086 (M.D. Ala. 1987); *Walker v. City of Mobile*, 508 So. 2d 1209 (Ala. Crim. App. 1987); *Witherspoon v. City of Mobile*, 513 So. 2d 62 (Ala. Crim. App. 1987); *Borden v. State*, 523 So. 2d 508 (Ala. Crim. App. 1987); *Thompson v. City of Clio*, 765 F. Supp. 1066 (M.D. Ala. 1991); *Mayfield v. State*, 591 So. 2d 143 (Ala. Crim. App. 1991); *Chadwick v. City of Birmingham*, 620 So. 2d 75 (Ala. Crim. App. 1992); *B.E.S. v. State*, 629 So. 2d 761 (Ala. Crim. App. 1993); *Graham v. City of Mobile*, 686 So. 2d 541 (Ala. Crim. App. 1996); *Ivey v. State*, 710 So. 2d 946 (Ala. Crim. App. 1998).

§ 13A-11-8. Harassment — Harassing communications.

(a)(1) HARASSMENT. — A person commits the crime of harassment if, with intent to harass, annoy, or alarm another person, he or she either:

a. Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact.

b. Directs abusive or obscene language or makes an obscene gesture towards another person.

(2) For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target of the threat to fear for his or her safety.

(3) Harassment is a Class C misdemeanor.

(b)(1) HARASSING COMMUNICATIONS. — A person commits the crime of harassing communications if, with intent to harass or alarm another person, he or she does any of the following:

a. Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm.

b. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

c. Telephones another person and addresses to or about such other person any lewd or obscene words or language.

Nothing in this section shall apply to legitimate business telephone communications.

(2) Harassing communications is a Class C misdemeanor.

History. Acts 1977, No. 77-607; Acts 1978, No. 78-770; Acts 1979, No. 79-471; Acts 1996, No. 96-767; Acts 1997, No. 97-552.

Effective date. Acts 1996, No. 96-767, effective May 28, 1996. Acts 1997, No. 97-552, effective May 27, 1997.

1996 amendments. Added subdivision (a)(2); and made nonsubstantive changes.

1997 amendments. Added "either" in the introductory language of subdivision (a)(1), and added "does any of the following" in the introductory language of subdivision (b)(1).

Editor's note. Former similar law: Code 1975, § 13-6-18.

Cross references. — This law is referred to in: §§ 15-10-3, 30-3-130, 30-5-2.

§ 13A-11-8 Commentary

This section partially reproduces Michigan Revised Criminal Code § 5530. Such behavior is partly covered by former Alabama law. Former § 13-6-18 (using abusive or insulting language in the presence of a girl or woman, etc.). The statute does not proscribe all cursing, only that done at certain times and places. Man sitting in cafe who tells sheriff, "I will do as I God damn please" in presence of women, violates the statute. *Lowery v. State*, 39 Ala. App. 659, 107 So. 2d 366 (1958).

The Criminal Code is designed to cover additional conduct intentionally done to harm, annoy, or alarm another. Alabama statutes on assault and battery, former §§ 13-1-40 through 13-1-50, made any nonconsented touching an assault and battery. *Seigel v. Long*, 169 Ala. 79, 53 So. 753 (1910) (defendant placed his hand on plaintiff's forehead and pushed his hat back for the purpose of seeing his face and identifying him). Under Article 2 of Chapter 6 of this Criminal Code there is no assault until there is physical injury defined as "impairment of

PROBATION

MANY TIMES SOMEONE WHO HAS BEEN FOUND GUILTY OF A CRIME IS PLACED ON PROBATION. PROBATION MAY BE EITHER FORMAL, WHERE A PERSON HAS TO REPORT TO A PROBATION OFFICER,

OR INFORMAL WHERE THEY JUST NEED TO STAY OUT OF TROUBLE AND NOT GET ARRESTED AGAIN.

WHEN YOU ARE PLACED ON FORMAL PROBATION YOU WILL BE DRUG TESTED.

YOU WILL BE REQUIRED TO REPORT TO A PROBATION OFFICER.

YOU CAN BE REVOKED IF YOU VIOLATE YOUR PROBATION.

YOU CAN BE PLACED ON INFORMAL AFTER ALL COURT COST AND FINES ARE PAID.

NOTE: 75% OF PEOPLE IN JAIL TODAY ARE NOT IN JAIL FOR THE CRIMES THEY COMMITTED THEY ARE IN JAIL FOR VIOLATING THEIR PROBATION.

State of Alabama Unified Judicial System	ORDER OF PROBATION	Case Number
Form CR-50 Rev. 6/98		

IN THE _____ COURT OF _____, ALABAMA
(Circuit or District) (Name of County)

STATE OF ALABAMA v. _____
Defendant

It appears to the court the above named defendant has been convicted of has been adjudicated a Youthful Offender for the offense of _____ and has been sentenced to _____

The defendant having applied for the benefits of probation and the court having examined the cause, it is ORDERED, ADJUDGED, and DECREED that the sentence is hereby suspended and that the defendant is placed on probation for a period of _____

It is the order of the court that the probationer comply with the following conditions of probation.

1. Do not violate any Federal, State, or local law.
2. Avoid injurious or vicious habits.
3. Avoid persons or places of disreputable or harmful conduct or character.
4. Report to the Probation Officer as directed.
5. Permit the Probation Officer to visit defendant at home or elsewhere.
6. Work faithfully at suitable employment as much as possible.
7. Remain within a specified place, to-wit: _____
8. Support his/her dependents to the best of his/her ability.
9. Do not change residence or employment without the consent of the Probation Officer.
10. Submit to substance abuse tests when ordered to do so by the Probation Officer. These tests may include urinalysis, breathalyzer, and blood samples, but are not limited thereto. Probationer will pay costs of tests.
11. Submit to searches by the Probation Officer of his person, residence, vehicle, or any property under his/her control.
12. Pay to the Probation Officer \$30.00 per month during the probation period, pursuant to law.
13. Do not possess, receive, or transport firearms.
14. If the defendant was convicted of any offense specified in Section 36-18-24, Ala. Code 1975, he or she must submit to DNA testing according to Section 36-18-25(c), Ala. Code 1975.
15. The defendant is ordered to pay fines, court costs, restitution, assessments, and other court-ordered monies at the rate of \$ _____ per month on or before the _____ day of each month, beginning _____. Payments of cash, money orders, or certified funds may be brought to the clerk's office. Money orders or certified funds may be mailed to the Clerk of Court: _____

Name _____
Address _____
City _____ State _____ Zip Code _____

- At each report to the probation officer, the defendant shall furnish written proof (Clerk's receipt or money order receipt) of any previous month's payment of court-ordered monies.
16. Notify the Clerk of Court of any change of mailing address and appear in court whenever ordered.
 17. Report to the Court Referral Officer immediately, and attend, pay for, and successfully complete the recommended program. The telephone number is _____
 18. The defendant shall perform _____ hours of community service to be approved by the court.
 19. Other conditions of probation ordered by the court are as follows: _____

It is the further order of the court that the defendant is hereby advised that the court may at any time revoke or modify any conditions of this probation or change the period of probation and may discharge defendant from probation or extend the period of probation. The probationer shall be subject to arrest for violation of any condition of the probation herein granted. The court may, at any time, for cause, order the original sentence executed.

_____ Date _____ Judge _____

A copy of this order has been delivered to the probationer, who has been instructed regarding this order

_____ Date _____ Probation Officer _____

The above instructions and conditions have been read and explained to me. I have received a copy of this order. I understand the conditions, and I agree to abide by them.

_____ Date _____ Probationer's Signature _____
_____ Probationer's Address _____ Probationer's Telephone Number _____
_____ City _____ State _____ Zip Code _____