

Ala. Code 1975, § 13A-6-29*

Inappropriate Medicating of Child

(*This Code section was amended by Act 2018-278, this charge does not include that amendment.)

The defendant is charged with inappropriate medicating of child.

A person commits the crime of inappropriate medicating of child if the defendant is the owner, operator, or employee of a licensed or statutorily exempt child care facility, with the intent to drug the child or alter the child's behavior beyond what is medically prescribed or with reckless disregard for the health, safety, and welfare of the child, medicates the child.

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

- (1) The defendant was the **[owner, operator, or employee]** of a licensed or statutorily exempt child care facility, **[name]**;
- (2) The defendant medicated a child, **[name]**; **(AND)**
- (3) The defendant did so with the intent to **[drug the child or alter the child's behavior] [beyond what was medically prescribed or with reckless disregard for the health, safety, and welfare of the child]**.

Medically prescribed means in accordance with a physician's prescription or in accordance with age-appropriate directions for the over-the-counter medication. [13A-6-29(a)(1)]

A person acts *recklessly* in regards to his/her conduct if:

- (1) The actor is aware that there is a substantial and unjustifiable risk that death will occur;
- (2) The risk of death is so great that the actor's failure to recognize this risk is a gross deviation from the standard of behavior to which a reasonable person would hold himself/herself in the same situation; **(AND)**
- (3) The actor consciously disregards this substantial and unjustifiable risk. [See 13A-2-2(3)]

[Read all appropriate - Intoxication]: A person who creates a risk, but is unaware that he/she has created that risk solely because of voluntary intoxication, acts recklessly with regards to that risk. *Intoxication* includes a disturbance of mental or physical capacities resulting from the introduction of any substance into the body. *Voluntary intoxication* means intoxication caused by substances that the actor knowingly introduced into his/her body, the tendency of which to cause intoxication he/she knows or ought to

know, unless he/she introduces them under circumstances that would afford a defense to the charge. *Intoxication* in itself does not constitute mental disease or defect. *Intoxication* is generally not a defense. However, *involuntary intoxication* is a defense if as a result the actor lacks capacity either to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law. *Intoxication*, whether voluntary or involuntary, is admissible in evidence whenever it is relevant to negate an element of the offense charged. When recklessness establishes an element of an offense and the actor is unaware of a risk because of *voluntary intoxication*, his/her unawareness is immaterial in a prosecution for that offense. [13A-3-2] .

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of inappropriate medicating of child, then you shall find the defendant guilty of inappropriate medicating of child.

If you find that the State has failed to prove any one or more of the elements of inappropriate medicating of child, then you cannot find the defendant guilty of inappropriate medicating of child.

Use Notes

If there is evidence of a fatality, near fatality, dismemberment, or permanent disability of a child, then a special verdict form should be used for the jury to determine whether such fact was proven beyond a reasonable doubt. These factors affect punishment. [See 13A-6-29(c)].

For unborn child exceptions see 13A-6-1(b) through (e).

[Approved 10-14-15.]