

Ala. Code 1975, §13A-6-71(a)

Engaging in Sex Act with Foster Child

The defendant is charged with engaging in a sex act with a foster child.

A person commits the crime of engaging in a sex act with a foster child if he/she is a foster parent and engages in sexual intercourse or deviant sexual intercourse with a foster child under the age of 19 years who is under his/her care or supervision.

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

- (1) The defendant was a foster parent;
- (2) The victim was a foster child under the age of 19 years;
- (3) The victim was under the care or supervision of the defendant;
- (4) The defendant engaged in sexual intercourse or deviant sexual intercourse with the foster child; **(AND)**
- (5) The defendant acted **[Insert appropriate mens rea element – see use note]**.

A *Foster Parent* is an individual approved or licensed by the Department of Human Resources or other child placing agencies who provides care and supervision to a foster child under the temporary or permanent custody of the department. [13A-6-71(e)]

A *Foster Child* is any person under 19 years of age, a person under the continuing jurisdiction of the juvenile court pursuant to §12-15-32, or a person under 21 years of age in foster care as defined by the Department of Human Resources. [Alabama Department of Human Resources, Social Services Division, Administrative Code, Chapter 660-5-29.1(c)(1)]

Sexual Intercourse has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [13A-6-60(1)]

Deviate Sexual Intercourse is any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another. [13A-6-60(2)]

[Read as appropriate]: Consent is not a defense to this charge. [13A-6-71(d)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of engaging in a sex act with a foster child, then you shall find the defendant guilty of engaging in a sex act with a foster child.

If you find that the State has failed to prove any one or more of the elements of the offense of engaging in a sex act with a foster child, then you cannot find the defendant guilty of engaging in a sex act with a foster child.

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

Use Notes

The statute does not state a specific mens rea element. Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

1. 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)]
2. A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
3. A person acts recklessly with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
4. A person acts with criminal negligence with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Approved 05/09/19]