

Ala. Code 1975, § 13A-6-125

Facilitating the Travel of a Child for an Unlawful Sex Act

The Defendant is charged with facilitating the travel of a child for an unlawful sex act.

A person commits the crime of facilitating the travel of a child for an unlawful sex act if he/she facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his/her benefit or for the benefit of another.

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

(1) The Defendant: **[Read as appropriate]:**

- (a) Facilitated;
- (b) Arranged;
- (c) Provided; **(OR)**
- (d) Paid;

For the transport of a child;

(2) The purpose of the transport was to engage with a child in an unlawful sex act, including: **[Read as appropriate]:**

- (a) Sexual intercourse;
- (b) Sodomy;
- (c) A sexual performance;
- (d) Obscene sexual performance; **(OR)**
- (e) Other sexual conduct; **(AND)**

(3) The unlawful sex act was for: **[Read as appropriate]:**

- (a) The Defendant's benefit; **(OR)**
- (b) The benefit of another.

(4) The defendant acted **[Insert appropriate mens rea element - See Use Notes]**.

Definitions: **[Note:** SOME of these definitions come from other articles of the Code & are provided to aid the court. **Read as appropriate.** Give in an order appropriate in your case.]

A *child* is defined as a person under 16 years of age. [13A-6-120].It includes a person whom the Defendant believes is a child. [See *Baney v. Ala.*, 42 So. 3d 170 (Ala. Crim. 2009)]

Masturbation is manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation. [13A-12-190(8)]

Obscene means that the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and the material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political or scientific value. [13A-12-200.2(17)]; **(OR)**

Obscene means (a) when used to describe any matter that contains a visual reproduction of breast nudity, matter that applying contemporary local community standards, on the whole, appeals to the prurient interest; and is patently offensive; and on the whole, lacks serious literary, artistic, political or scientific value; (b) when used to describe matter that is a depiction of an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct, matter containing such a visual reproduction that itself lacks serious literary, artistic, political or scientific value. [13A-12-190(13)]

A *local community* is the judicial circuit in which the indictment is brought. [13A-12-190(14)]

Sado-masochistic abuse means flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or the binding or physical restraining of a person who is nude or clad in undergarments or in a revealing or bizarre costume in an act of sexual stimulation. [13A-12-200.1(21)]; **(OR)**

Sado-masochistic abuse means flagellation or torture, for the purpose of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or the condition of a person who is nude or clad in undergarments or in a revealing or bizarre costume being fettered, bound or otherwise physically restrained for the purpose of sexual stimulation. [13A-12-190(5)]

Sexual acts include sexual intercourse, sodomy, sexual performance, obscene sexual performance, or sexual conduct for his/her benefit. See [13A-6-111(d)]

Sexual conduct is any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; or any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an

animal, in an act of sexual stimulation, gratification or perversion. [13A-12-200.1(22) and 13A-12-190(9)]

Sexual intercourse means intercourse, real or simulated, whether genital-genital, genital-anal, oral-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal and has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [13A-6-60(1); 13A-12-190(7); and 13A-12-200.1(23)]

Sexual performance means an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet. [13A-6-151(7)(b)(1)]

Sodomy is deviate sexual intercourse which is any act of sexual gratification between two persons involving the sex organs of one person and the mouth or anus of another. [13A-6-63 & 64; 13A-6-60(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of facilitating the travel of a child for an unlawful sex act, then you shall find the Defendant guilty of the offense of facilitating the travel of a child for an unlawful sex act.

If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of facilitating the travel of a child for an unlawful sex act, then you cannot find the Defendant guilty of the offense of facilitating the travel of a child for an unlawful sex act.

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.

It shall not be a defense to prosecution under this section:

1. That an undercover operative or law enforcement officer was involved in the detection and investigation of the offense; **(OR)**
2. That a meeting as described in this section did not occur. [13A-6-127(a)]

The term "prurient interest" appears in the definition of obscenity. According to *Black's Law Dictionary* (2nd ed.) the term means "a morbid interest in sex, nudity and obscene or pornographic matters."

[Adopted 4-9-15.]