

Ala. Code 1975, § 13A-10-35(a)(2)

Permitting or Facilitating Escape in the Second Degree
(Public Servant)

The defendant is charged with permitting or facilitating escape in the second degree.

A person commits the crime of permitting or facilitating escape in the second degree if he/she is a public servant of a penal or detention facility and intentionally, knowingly, or recklessly permits or facilitates the escape of a person arrested for, charged with, or convicted of a misdemeanor.

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

- (1) The Defendant was a public servant of a penal or detention facility, **[insert description]**;
- (2) The Defendant permitted or facilitated the escape of a person, **[insert description]**;
- (3) That person had been arrested for, charged with or convicted of a misdemeanor, **[insert crime]; (AND)**
- (4) The Defendant acted intentionally, knowingly or recklessly.

A *public servant* is any officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant, or otherwise in performing a governmental function. [13A-10-1(7)]

A *penal facility* is any security correctional institution for the confinement of persons arrested for, charged with or convicted of a criminal offense, including but not limited to the following security facilities: the state penitentiary and any branch thereof or any county or city jail. [13A-10-30(b)(3)]

A *detention facility* is any place used for the confinement, pursuant to law, of a person:

- (a) Charged with or convicted of a criminal offense;
- (b) Charged with being or adjudicated a youthful offender, or a neglected minor or juvenile delinquent;
- (c) Held for extradition; **(OR)**
- (d) Otherwise confined pursuant to an order of the court. [13A-10-30(b)(2)]

A *misdemeanor* is an offense for which a sentence to a term of imprisonment not in excess of one year may be imposed. [13A-1-2(9)]

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)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

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)]

[Read as appropriate]: An *attempt* to commit a crime means that, with the intent to commit a specific offense, a person did an overt act towards the commission of that offense. [13A-4-2(a)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of permitting or facilitating escape in the second degree, then you shall find the defendant guilty of permitting or facilitating escape in the second degree.

If you find that the State has failed to prove any one or more of the elements of permitting or facilitating escape in the second degree, then you cannot find the defendant guilty of permitting or facilitating escape in the second degree.

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

[Approved 8-20-15.]