

Ala. Code 1975, § 13A-12-121.1(c)

Engaging in Prostitution with Minor
(Agree)

The Defendant is charged with engaging in an act of prostitution with a minor.

A person commits the crime of engaging in an act of prostitution with a minor if he/she agrees to engage in sexual intercourse, deviate sexual intercourse, or sexual contact with a minor or participate in the act for monetary consideration or other thing of marketable value and give or accept monetary consideration or other thing of value in furtherance of the agreement.

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

- (1) The defendant (name of defendant) agreed to engage in sexual intercourse, deviate sexual intercourse, or sexual contact with a person or participate in the act;
- (2) The defendant did so for monetary consideration or other thing of marketable value;
- (3) The defendant gave or accepted monetary consideration or other thing of value in furtherance of the agreement;
- (4) The defendant did so with a minor; **(AND)**
- (5) The defendant acted **[Insert appropriate mens rea element – see Use Note]**.

Sexual Intercourse has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [13A-6-60(4)]

Deviate Sexual Intercourse is any sexual act involving the genitals of one person and the mouth or anus of another person. [See 13A-6-60(5) & Use Note]

Sexual Contact is any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party. The term does not require skin to skin contact. [13A-6-60(3)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of engaging in an act of prostitution with a minor, then you shall find the defendant guilty of engaging in an act of prostitution with a minor.

If you find that the State has failed to prove beyond a reasonable doubt one or more of the above elements of engaging in an act of prostitution with a minor, then you cannot find the defendant guilty of engaging in an act of prostitution with a minor.

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 the conduct. Ala. Code § 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. Ala. Code § 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 result 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. Ala. Code § 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. Ala. Code § 13A-2-2(4).

This statute was not amended to replace "deviate sexual intercourse" with "sodomy." The definition of "sodomy" as found in 13A-6-60(5) is used here to account for the 2019 amendment that otherwise substituted "sodomy" for "deviate sexual intercourse."

A minor is not defined in this article. The age varies in Alabama criminal statutes. Some examples are 13A-12-200.1(16) (A minor is an unmarried person under the age

of 18 years for obscenity purposes.); 13A-6-151(5) (A minor is a person under the age of 19 for human trafficking purposes.); 12-15-102(18) (A minor is an individual under the age of 19 years and who is not a child within the meaning of this chapter for juvenile purposes.)

Evidence of any of the following facts or conditions does not constitute a defense in a prosecution under Section 13A-12-121.1, nor shall the evidence preclude a finding of a violation:

- (1) A minor victim's sexual history or history of commercial sexual activity.
- (2) A minor victim's connection by blood or marriage to a defendant in the case or to anyone involved in the minor victim's prostitution.
- (3) Consent of or permission by a minor victim or anyone else on the minor victim's behalf to any commercial sex act or sexually explicit performance.
- (4) Age of consent to engage in sexual activity.
- (5) Mistake as to the minor victim's age, even if the mistake is reasonable.
[13A-12-124(b)]

[Approved 04/24/26]