

**Ala. Code 1975, § 13A-12-202**

**Criminal Solicitation To Commit Controlled Substance Crime**

The defendant is charged with criminal solicitation to commit **[Insert name of controlled substance crime solicited]**.

A person commits the crime of criminal solicitation to commit **[Insert name of controlled substance crime solicited]**, if, with the intent that another person engage in conduct constituting a crime, he/she solicits, requests, commands or importunes the other person to engage in such conduct and the crime solicited is a controlled substance crime.

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

- (1) The defendant solicited, requested, commanded or importuned a person, **[Insert name of person solicited]**, to commit a controlled substance crime **[Insert name of controlled substance crime solicited]**;
- (2) **[Insert name of controlled substance crime solicited]** is a controlled substance crime; **(AND)**
- (3) The defendant intended that the other person engage in conduct constituting the controlled substance crime of **[Insert name of controlled substance crime solicited]**.

A person commits the crime of **[Insert name of controlled substance crime solicited]** if **[Insert instruction for that crime]**.

*Importune* means to urge persistently. **[Instruction for 13A-4-1, Criminal Solicitation.]**

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)]

**[Read if appropriate - Corroboration]** – A person may not be convicted of criminal solicitation on the uncorroborated testimony of **[Insert name of person solicited]**. Such testimony, to be sufficient, must be corroborated by other proof of circumstances tending to show both:

- (1) the defendant solicited him/her to commit the crime of **[Insert name of controlled substance crime solicited]**; **(AND)**

- (2) the defendant did so with the requisite intent that the person be caused to commit the crime of **[Insert name of controlled substance crime solicited]**. [13A-4-1(a)]

**[Read if appropriate - Renunciation]** – A person is not guilty of criminal solicitation if he/she voluntarily and completely renounced his/her criminal intent by both:

- (1) notifying the person solicited of his/her renunciation; **(AND)**
- (2) either:
  - (a) giving timely and adequate warning to law enforcement; **(OR)**
  - (b) making a substantial effort to prevent the criminal conduct solicited.

The burden of raising this issue is on the defendant, but this does not shift the burden of proof to the defendant. [13A-4-1(b)]

**[Read if appropriate - Incidental]** – A person is not guilty of criminal solicitation when his/her solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the offense solicited. When the solicitation constitutes an offense other than criminal solicitation which is related to but separate from the offense solicited, the defendant may be found guilty of the related offense only and not of the criminal solicitation. [13A-4-1(c)]

**[Read if appropriate - Solicited Person]** – It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the offense solicited because of any of the following:

- (1) criminal irresponsibility or other legal incapacity or exemption;
- (2) unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose; **(OR)**
- (3) any other factor precluding the mental state required for the commission of the offense in question. [13A-4-1(d)]

**[Read if appropriate - Incapable]** – It is no defense to a prosecution for criminal solicitation that the defendant is legally incapable of committing the solicited offense. [13A-4-1(e)]

**[Read if appropriate - Completed]** – It is no defense to a prosecution for criminal solicitation that the solicited offense was actually committed. [13A-4-5]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense, then you shall find the defendant guilty of this offense.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense, then you cannot find the defendant guilty of this offense.

### **Use Notes**

Attempt, criminal solicitation, and criminal conspiracy to commit a controlled substance crime are offenses included in any controlled substance crime that is charged, and a defendant charged with any controlled substance crime may be convicted of attempt, solicitation, or conspiracy to commit it. [13A-12-205]

A person may not be convicted on the basis of the same course of conduct of both the actual commission of an offense and criminal solicitation of the offense. [13A-4-5(b)]

Although a prosecution for the offense of criminal solicitation under § 13A-4-1 sometimes might be brought even where the substantive crime solicited was actually committed, solicitation charges will be brought primarily where the solicitation was unsuccessful, and that prosecution as an accomplice under § 13A-2-23 will be the normal course where the solicitation did induce or cause the other person or persons to commit a crime. [13A-2-23 (Commentary)]

The Legislature did not intend to punish a person who merely solicits another to sell a controlled substance to the solicitor. See *Tyler v. State*, 587 So. 2d 1238, 1243 (Ala. Crim. App. 1991).

It is not necessary that an actual sale be completed for one to be guilty of solicitation. See *Thornton v. State*, 570 So. 2d 762, 768 (Ala. Crim. App. 1990); *Kimbrough v. State*, 544 So.2d 177, 179 (Ala. Crim. App. 1989).

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