

Ala. Code 1975, § 13A-12-204

Criminal Conspiracy To Commit Controlled Substance Crime

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

A person commits the crime of criminal conspiracy to commit **[Insert name of controlled substance crime conspired]**, if, with the intent that conduct constituting an offense, **[Insert name of controlled substance crime conspired]**, be performed, he/she agrees with one or more persons to engage in or cause the performance of such conduct, and any one or more of such persons does an overt act to effect an objective of the agreement and the object of the conspiracy is a controlled substance crime.

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

- (1) The defendant agreed with one or more persons, **[Insert the name(s) of co-conspirator(s)]**, to engage in or cause the performance of conduct constituting an offense, **[Insert name of controlled substance crime conspired]**;
- (2) **[Insert name of controlled substance crime conspired]** is a controlled substance crime;
- (3) One or more of the conspirators, **[Insert the name(s) of co-conspirator(s)]**, did an overt act, **[Insert overt act]**, to effect an objective of the agreement; **(AND)**
- (4) The defendant intended that conduct constituting an offense, **[Insert name of controlled substance crime conspired]**, be performed.

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

What constitutes *commission of an overt act* towards the commission of the offense of **[Insert name of controlled substance crime conspired]** is for the jury to decide under the circumstances. It requires that the defendant do some act directed to the eventual carrying out of the crime. However, mere remote acts in preparation which are not reasonably in the chain of causation leading to the completion of the crime are insufficient.

To qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. It is, however, not necessary for the State to prove that the defendant

would have actually succeeded if he/she had followed the course of conduct upon which he/she had started. [See *Skinner v. State*, 843 So. 2d 820, 825 (Ala. Crim. App. 2002).]

If a person knows or should know that one with whom he/she agrees has in turn agreed or will agree with another to effect the same criminal objective, he/she shall be deemed to have agreed with such other person, whether or not he/she knows the other's identity. [13A-4-3(b)]

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 - Renunciation] – A person is not guilty of criminal conspiracy if, under circumstances manifesting a voluntary and complete renunciation of his/her criminal purpose, he/she either:

- (1) gave a timely and adequate warning to law enforcement; **(OR)**
- (2) made a substantial effort to prevent the enforcement of the criminal conduct contemplated by the conspiracy.

The burden of injecting this issue is on the defendant, but this does not shift the burden of proof. [13A-4-3(c)]

[Read if appropriate - Renunciation by Co-Conspirator] – Renunciation by one conspirator does not affect the liability of another conspirator who does not join in the abandonment of the conspiratorial objective. The burden of injecting this issue is on the defendant, but this does not shift the burden of proof. [13A-4-3(c)]

[Read if appropriate - Status of Co-Conspirator] – It is no defense to a prosecution for criminal conspiracy that:

- (1) the co-conspirator(s) has (have) been:
 - (a) acquitted;
 - (b) not prosecuted;
 - (c) not convicted;
 - (d) convicted of a different offense; **(OR)**
 - (e) given immunity from prosecution; **(OR)**
- (2) the co-conspirator(s) could not be guilty of the conspiracy or object crime because of lack of mental responsibility or culpability or other legal incapacity or defense. [13A-4-3(d)(1) & (2)]

[Read if appropriate - Legally Incapable] – It is no defense to a prosecution for criminal conspiracy that the defendant is legally incapable of committing the object offense. [13A-4-3(d)(3)]

[Read if appropriate - Defense] – The defendant may not be convicted if, had the criminal conduct contemplated by the conspiracy actually been performed, he/she would be immune from liability under the law defining the offense. [13A-4-3(e)]

[Read if appropriate - Defenses] – The defendant may not be convicted as a conspirator to commit an offense if either:

- (1) he/she would be a victim of that offense; **(OR)**
- (2) his/her conduct would be inevitably incidental to its commission. [13A-2-24]

[Read if appropriate - Completion] – It is no defense to a prosecution for criminal conspiracy that the conspired offense was actually committed. [13A-4-5(a)]

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 conspiracy to commit the offense. [13A-4-5(b)]

Instructing the jury on the elements of complicity when a defendant is charged with conspiracy is error. See *Jones v. State*, 561 So. 2d 526 (Ala. Crim. App. 1990).

[Approved 6-4-18.]