

Ala. Code 1975, § 13A-13-8(e)

Failure To Report Missing Child Second Degree

The defendant is charged with failure to report a missing child in the second degree.

A person commits the crime of failure to report a missing child in the second degree if he/she is a child's custodian who is subject to the duty imposed by law, and he/she fails or delays to make, or fails to cause to be made, the required report with willful or reckless disregard for the safety of the child.

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

- (1) The defendant was a child's custodian who was subject to the duty imposed by law; **(AND)**
- (2) The defendant failed or delayed to make, or failed to cause to be made, the required report with willful or reckless disregard for the safety of the child.

A *custodian* is a child's father or mother, whether biological or adoptive, a child's legally appointed guardian, or the spouse of a child's father, mother, or legally appointed guardian. In the case where only one parent has legal custody, the term means the parent with legal custody or his/her spouse. [13A-13-8(b)(3)]

A *guardian* is a person who has qualified as a guardian of a minor or incapacitated person pursuant to parental or spousal nomination or court appointment and includes a limited guardian as described in Sections 26-2A-78(e) and 26-2A-105(c), but excludes one who is merely a guardian ad litem. [13A-13-8(b)(4) & 26-2A-20(7)]

A *child* is a person who is less than 18 years of age. [13A-13-8(b)(2)]

The *duty imposed by law* is as follows: A child's custodian shall report, or cause a report to be made, to a law enforcement officer or agency that the child is missing when the child's whereabouts are unknown to the custodian and the custodian knows, believes, or has substantial reason to believe: **[Read as appropriate]:**

- (1) That the child's whereabouts are unknown to any person under whose temporary supervision the custodian placed the child;
- (2) That the child is the victim of an abduction or the victim of serious bodily harm, abuse, or sexual exploitation; **(OR)**
- (3) That the child is a lost or runaway child. [13A-13-8(c)]

An *abduction* is the removal or retention of a child without the consent of the child's custodian. [13A-13-8(b)(1)]

A *lost child* is a child who is unable to find his or her way back to his or her custodian. [13A-13-8(b)(5)]

A *runaway child* is a child who voluntarily absents himself or herself from the control of his or her custodian with intent to remain away indefinitely. [13A-13-8(b)(6)]

The *required report* shall be made verbally, either by telephone or direct communication, followed by a written report as requested by a law enforcement official. [13A-13-8(d)]

A person acts *recklessly* with respect to a result or to a circumstance described by a statute defining an offense 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. **[A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in Section 13A-3-2(e)(2), acts recklessly with respect thereto.]** [13A-2-2(3)]

[Read as appropriate]: It is a defense that the custodian made reasonably diligent efforts to verify the whereabouts and safety of the child during the period of any delay in making the required report. [13A-13-8(g)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of failure to report a missing child in the second degree, then you shall find the defendant guilty of failure to report a missing child in the second degree.

If you find that the State has failed to prove any one or more of the elements of failure to report a missing child in the second degree, then you cannot find the defendant guilty of failure to report a missing child in the second degree.

[Approved 09-11-15.]