

Ala. Code 1975, § 13A-6-121

Facilitating Solicitation of Unlawful Sexual Conduct with a Child

The Defendant is charged with facilitating solicitation of unlawful sexual conduct with a child.

A person commits the crime of facilitating solicitation of unlawful sexual conduct with a child if he/she knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct.

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

- (1) The Defendant: **[Read as appropriate]:**
 - (a) Compiled, entered into, or transmitted by use of a computer or otherwise;
 - (b) Made, printed, published, or reproduced by computerized or other means;
 - (c) Knowingly caused or allowed to be entered into or transmitted by use of a computer or otherwise; **(OR)**
 - (d) Bought, sold, received, exchanged, or disseminated;

- (2) A notice, statement, or advertisement of: **[Read as appropriate]:**
 - (a) A child's name;
 - (b) Telephone number;
 - (c) Place of residence;
 - (d) Other geographic location;
 - (e) Physical characteristics; **(OR)**
 - (f) Other descriptive or identifying information;

- (3) The Defendant did so for the purpose of: **[Read as appropriate]:**
 - (a) Facilitating;
 - (b) Encouraging;
 - (c) Offering; **(OR)**
 - (d) Soliciting;

- (4) Unlawful sexual conduct of or with a child, or the visual depiction of such conduct; **(AND)**
- (5) The Defendant did so knowingly.

Definitions: **[Note:** SOME of these definitions come from other articles of the Code & are provided to aid the court. **Read as appropriate.** Give in an order appropriate in your case.]

A *child* is defined as a person under 16 years of age. [13A-6-120].It includes a person whom the Defendant believes is a child. [See *Baney v. Ala.*, 42 So. 3d 170 (Ala. Crim. 2009)]

A *computer* is an electronic, magnetic, optical, electrochemical, or other high speed data processing device or system that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device. [13A-8-111(2)]

Masturbation is manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation. [13A-12-190(8)]

Sado-masochistic abuse means flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or the binding or physical restraining of a person who is nude or clad in undergarments or in a revealing or bizarre costume in an act of sexual stimulation. [13A-12-200.1(21)]; **(OR)**

Sado-masochistic abuse means flagellation or torture, for the purpose of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or the condition of a person who is nude or clad in undergarments or in a revealing or bizarre costume being fettered, bound or otherwise physically restrained for the purpose of sexual stimulation. [13A-12-190(5)]

Sexual conduct is any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; or any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion. [13A-12-200.1(22) and 13A-12-190(9)]

Sexual intercourse means intercourse, real or simulated, whether genital-genital, genital-anal, oral-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal and has its ordinary meaning and

occurs upon any penetration, however slight; emission is not required. [13A-6-60(1); 13A-12-190(7); and 13A-12-200.1(23)]

Visual depiction is a portrayal, representation, illustration, image, likeness, or other thing that creates a sensory impression, whether an original, duplicate, or reproduction. [13A-12-190(15)]

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

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of facilitating solicitation of unlawful sexual conduct with a child, then you shall find the Defendant guilty of the offense of facilitating solicitation of unlawful sexual conduct with a child.

If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of facilitating solicitation of unlawful sexual conduct with a child, then you cannot find the Defendant guilty of the offense of facilitating solicitation of unlawful sexual conduct with a child.

Use Notes

It shall not be a defense to prosecution under this section:

1. That an undercover operative or law enforcement officer was involved in the detection and investigation of the offense; **(OR)**
2. That a meeting as described in this section did not occur. [13A-6-127(a)]

[Adopted 4-9-15.]