

**Ala. Code 1975, § 13A-6-122**

**Electronic Solicitation of a Child**

The Defendant is charged with electronic solicitation of a child.

A person commits the crime of electronic solicitation of a child if he/she, with the intent to commit an unlawful sex act, knowingly **[select as appropriate]** entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a **[select as appropriate]** computer, on-line service, internet service, internet bulletin board service, weblog, cellular phone, video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, or any other electronic communication or storage device, **[select as appropriate]** a child who is at least 3 years younger than the defendant, or another person believed by the defendant to be a child at least 3 years younger than the defendant, to meet with the defendant or any other person, for the purpose of engaging in **[select as appropriate]** sexual intercourse, sodomy, or to engage in a sexual performance, an obscene sexual performance, or sexual conduct for his/her benefit or for the benefit of another.

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

- (1) The Defendant knowingly
  - (a) **[select as appropriate]** enticed, induced, persuaded, seduced, prevailed, advised, coerced, lured, **or** ordered, **or** attempted to entice, induce, persuade, seduce, prevail, advise, coerce, lure, **or** order;
  - (b) **[select as appropriate]**
    - (i) a child who was at least 3 years younger than the defendant, **or**
    - (ii) another person believed by the defendant to be a child at least 3 years younger than the defendant;
  - (c) To meet with **[select as appropriate]**
    - (i) the defendant, **or**
    - (ii) any other person,
  - (d) For the purpose of engaging in **[select as appropriate]**

- (i) sexual intercourse,
  - (ii) sodomy, **or**
  - (iii) to engage in **[select as appropriate]**
    - a. a sexual performance,
    - b. an obscene sexual performance, **or**
    - c. sexual conduct;
- (e) For **[select as appropriate]**
- (i) his/her benefit, **or**
  - (ii) for the benefit of another;
- (2) The Defendant did so by means of a **[select as appropriate]** computer, on-line service, internet service, internet bulletin board service, weblog, cellular phone, video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, **or** any other electronic communication or storage device; **(AND)**
- (3) The Defendant did so with the intent to commit an unlawful sex act.

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)]

*Obscene* means that the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and the material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and a reasonable person would find

that the material, taken as a whole, lacks serious literary, artistic, political or scientific value. [13A-12-200.2(17)]; **(OR)**

*Obscene* means (a) when used to describe any matter that contains a visual reproduction of breast nudity, matter that applying contemporary local community standards, on the whole, appeals to the prurient interest; and is patently offensive; and on the whole, lacks serious literary, artistic, political or scientific value; (b) when used to describe matter that is a depiction of an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct, matter containing such a visual reproduction that itself lacks serious literary, artistic, political or scientific value. [13A-12-190(13)]

A *local community* is the judicial circuit in which the indictment is brought. [13A-12-190(14)]

*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 acts* include sexual intercourse, sodomy, sexual performance, obscene sexual performance, or sexual conduct for his/her benefit. See [13A-6-111(d)]

*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)]

*Sexual performance* means an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or

private, live, photographed, recorded, videotaped, or projected over the Internet. [13A-6-151(7)(b)(1)]

*Sodomy* is deviate sexual intercourse which is any act of sexual gratification between two persons involving the sex organs of one person and the mouth or anus of another. [13A-6-63 & 64; 13A-6-60(2)]

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)]

A person acts *intentionally* with respect to a result or conduct when his/her purpose is to cause that result or engage in that conduct. [13A-2-2(1)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of electronic solicitation of a child, then you shall find the Defendant guilty of the offense of electronic solicitation of 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 electronic solicitation of a child, then you cannot find the Defendant guilty of the offense of electronic solicitation of 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)]

The term “prurient interest” appears in the definition of obscenity. According to *Black’s Law Dictionary* (2nd ed.) the term means “a morbid interest in sex, nudity and obscene or pornographic matters.”

[Adopted 4-9-15.]