

Ala. Code 1975, § 13A-6-45

Interference with Custody

The defendant is charged with interference with custody.

A person commits the crime of interference with custody if he/she knowingly takes or entices: **[Read all appropriate]:**

1. Any child under the age of 18 from the lawful custody of his/her parent, guardian or other lawful custodian; **(OR)**
2. Any committed person from the lawful custody of his/her parent, guardian or other lawful custodian.

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

- (1) The defendant took or enticed another person, **[name]**;
- (2) That person, **[name]**, was: **[Read all appropriate]:**
 - (a) A child under the age of 18 from the lawful custody of his/her parent, guardian or other lawful custodian; **(OR)**
 - (b) A committed person from the lawful custody of his/her parent, guardian or other lawful custodian; **(AND)**
- (3) The defendant did so knowingly and intentionally. **[See Use Note]**

[Read as appropriate]: *Committed person* means, in addition to anyone committed under judicial warrant, any neglected, dependent or delinquent child, mentally defective or insane person or any other incompetent person entrusted to another's custody by authority of law. [13A-6-45(a)(2)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense 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 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 as appropriate - See Use Note]: A person does not commit interference with custody if the actor's sole purpose is to assume lawful control of the child. [13A-6-45(b)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of interference with custody, then you shall find the defendant guilty of interference with custody.

If you find that the State has failed to prove any one or more of the elements of interference with custody, then you cannot find the defendant guilty of interference with custody.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

Although the statute only states that a person commits interference with custody if he/she “knowingly” takes or entices a child or committed person, the Alabama Court of Criminal Appeals has held that “the legislature intended the offense of interference with custody to be a crime requiring specific intent.” *Kennedy v. State*, 640 So. 2d 22, 32 (Ala. Crim. App. 1993).

The burden of injecting the defense is on the defendant, but this does not shift the burden of proof. [13A-6-45(b)]

[Approved 10-14-15.]