

Ala. Code 1975, § 13A-6-65.1(a)(2)

Sexual Torture
(Incapable of Consent)

The defendant is charged with sexual torture.

A person commits the crime of sexual torture if he/she penetrates with an inanimate object the vagina or anus or mouth of another person who is incapable of consent by reason of physical helplessness or mental incapacity with the intent to sexually torture or to sexually abuse.

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

- (1) The defendant penetrated the vagina or anus or mouth of another person, **[Insert Victim's name]**, with an inanimate object **[Describe]**;
- (2) The other person is incapable of consent by reason of physical helplessness or mental incapacity; **(AND)**
- (3) The defendant did so with the intent to sexually torture or to sexually abuse.

[Read as appropriate] *Physically helpless* means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. [13A-6-60(7)]

[Read as appropriate] *Mentally incapacitated* means that a person is rendered temporarily incapable of appraising or controlling his/her conduct owing to the influence of a narcotic or intoxicating substance administered to him/her without his/her consent, or to any other incapacitating act committed upon him/her without his/her consent. [13A-6-60(6)]

Consent is no defense to a prosecution for this offense. [13A-6-70(c)(3)&(4)]

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)]

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

If you find that the State has failed to prove any one or more of the elements of the offense of sexual torture, then you cannot find the defendant guilty of sexual torture.

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

[Approved 9-2-15.]