

Ala. Code 1975, §13A-8-151(a)(2)
Selling Unlawful Telecommunication Device

The defendant is charged with selling an unlawful telecommunication device.

A person commits the crime of selling an unlawful telecommunication device if he/she knowingly sells, possesses, distributes, gives, transports, or otherwise transfers to another or offers or advertises for sale any of the following: **[Read as appropriate]:**

1. An unlawful telecommunication device, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ the unlawful telecommunication device, or to allow the same to be used or employed, for an illegal purpose, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling such unlawful telecommunication device; **(OR)**

2. The material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication device.

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

(1) The defendant sold, possessed, distributed, gave, transported, or otherwise transferred to another or offered or advertised for sale any of the following: **[Read as appropriate]:**

A. An unlawful telecommunication device, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ the unlawful telecommunication device, or to allow the same to be used or employed, for an illegal purpose, or knowing or having reason to believe that the same was intended to be so used, or that the aforesaid plans or instructions were intended to be used for making or assembling such unlawful telecommunication device; **(OR)**

B. The material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intended to use the material in the manufacture of an unlawful telecommunication device;

(AND)

(2) The Defendant did so knowingly.

A manufacture of an unlawful telecommunication device is the production or assembly of an unlawful telecommunication device or the modification,

alteration, programming, or reprogramming of a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider. [13A-8-150(1)]

To *publish* means the communication or dissemination of information to any one or more persons, either orally in person, or by telephone, computer network, radio, television, or in a writing of any kind, including, without limitation, a letter or memorandum, circular, handbill, newspaper, magazine article, or book. [13A-8-150(2)]

A *telecommunication device* is any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic, electronic, or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism, or other component that is capable of facilitating the transmission or reception of telephonic, electronic, or radio communication. [13A-8-150(3)]

A *telecommunication service* is any service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, data, writings, images, sounds, or intelligence of any nature by telephone, including cellular telephones, wire, radio, electromagnetic, photoelectronic, or photo-optical system. [13A-8-150(4)]

A *telecommunication service provider* is a person or entity providing telecommunication service including, but not limited to, a cellular, paging, or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment or telecommunication service. [13A-8-150(5)]

An *unlawful telecommunication device* is any electronic serial number, mobile identification number, personal identification number, or any telecommunication device that is capable, or has been altered, modified, programmed, or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable of acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. The term includes, but is not limited to, telecommunication devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or illegally cloned microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider, and other instruments capable of disguising their identity or location or of gaining access to a communication system operated by a telecommunication service provider. Excluded from being

classified as unlawful is a common piece of telephone installation and maintenance equipment known as a dial set or butt-in-ski. [13A-8-150(6)]

[Read as appropriate: Insert charge for 13A-8-151(a)(1)(a.) or (b.)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense 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 elements of selling an unlawful telecommunication device, then you shall find the defendant guilty of selling an unlawful telecommunication device.

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 selling an unlawful telecommunication device, then you shall find the defendant not guilty of selling an unlawful telecommunication device.

If you find the defendant guilty of selling an unlawful telecommunication device, then it shall be your duty to determine if the offense involved 5 or more unlawful telecommunication devices beyond a reasonable doubt. You shall enter your verdict on a special verdict form which I will provide you. If you do not find the defendant guilty of selling an unlawful telecommunication device, then you need not proceed further.

[Approved October 18, 2019].