

Ala. Code 1975, § 13A-10-195(a)

Possession, Manufacture, Transport, or Distribution of Detonator, Explosive, Poison Gas, or Hoax Device While Under Indictment or Prior Felony Conviction

The defendant is charged with possession, manufacture, transport, or distribution of a detonator, explosive, poison gas, or hoax device while under indictment or having been convicted of a felony.

A person commits the crime of possession, manufacture, transport, or distribution of a detonator, explosive, poison gas, or hoax device while under indictment or having been convicted of a felony if he/she possesses, manufactures, transports, or distributes a detonator, explosive, poison gas, or hoax device while under indictment or having been convicted of a felony.

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

- (1) The defendant possessed, manufactured, transported, or distributed a detonator, explosive, poison gas, or hoax device, **[insert name]**;
- (2) The defendant at the time was under indictment or had been convicted of a felony by a court of this state, any other state, the United States including its territories, possessions, and dominions, or a foreign nation; **(AND)**
- (3) The Defendant acted **[insert appropriate mens rea element - See Use Notes]**.

To *possess* means to have physical possession or otherwise to exercise dominion or control over tangible property. [13A-1-2(13)].

Manufacturing is the process of combining two or more components necessary to produce a destructive device, over-pressure device, explosive, detonator, or poison gas, with the exception of commercially manufactured reactive targets used for recreational shooting purposes, or manufactured under provisions set forth under a permit issued by the State Fire Marshal. [13A-10-190(12)]

To *distribute* is the actual, constructive, or attempted transfer from one person to another. [13A-10-190(6)]

A *detonator* is a device containing a detonating charge that is used to initiate detonation in an explosive, including, but not limited to, electric blasting caps, blasting caps for use with safety fuses, and detonating cord delay connectors. [13A-10-190(4)]

An *explosive* is a chemical compound or other substance or mechanical system intended for the purpose of producing an explosion capable of causing injury to persons or damage to property or containing oxidizing and combustible units or other ingredients

in proportions or quantities that ignition, fire, friction, concussion, percussion, or detonator may produce an explosion capable of causing injury to persons or damage to property. The term explosive shall not include common fireworks, model rockets, and model rocket engines designed, sold, and used for the purpose of propelling recoverable aero models, or toy pistol paper caps in which the explosive content does not average more than 0.25 grains of explosive mixture per paper cap for toy pistols, toy cannons, toy canes, toy guns, or other devices using paper caps unless the devices are used as a component of a destructive device. [13A-10-190(7)]

The following materials are *explosives*: **[Read as appropriate from the list in 13A-10-191]** [13A-10-191] [See also 13A-10-192]

Poison gas is a toxic chemical or its precursors that through its chemical action or properties on life processes causes death or permanent injury to human beings. The term poison gas shall not include any of the following:

a. Riot control agents, smoke, and obscuration materials or medical products which are manufactured, possessed, transported, or used in accordance with the laws of the United States and of this state;

b. Tear gas devices designed to be carried on or about the person which contain not more than one-half ounce of the chemical;

c. Pesticides manufactured, stored, transported, distributed, possessed, or used in accordance with Chapter 7 of Title 2, the Federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163, as amended, and the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, as amended. [13A-10-209(2)]

[13A-10-190(14)]

A *hoax device* is a device or article which has the appearance of a destructive device or bacteriological or biological weapon.[13A-10-190(10)]

A *conviction* is an adjudication of guilt of or a plea of guilty or nolo contendere to the commission of an offense against the laws of this state, any other state or territory, the United States, or a foreign nation recognized by the United States. The term shall include the adjudication or plea of a juvenile to the commission of an act which if committed by an adult would constitute a crime under the laws of this state. [13A-10-190(2)]

A *felony* is an offense punishable by imprisonment for a term of one year or more, and includes conviction by a court-martial under the Uniform Code of Military Justice for an offense which would constitute a felony under the laws of the United States. A conviction of an offense under the laws of a foreign nation shall be considered a felony for the purposes of this article if the conduct giving rise to the conviction would have constituted a felony under the laws of this state or of the United States if committed within the jurisdiction of this state or the United States at the time of the conduct. [1]3A-10190(9)

[Read as appropriate]

A *destructive device* is: **[Read as appropriate]**:

- (a) An explosive, incendiary, or over-pressure device or poison gas which has been configured as a bomb; a grenade; a rocket with a propellant charge of more than four ounces; a missile having an explosive or incendiary charge of more than one-quarter ounce; a poison gas; a mine; a Molotov cocktail; or any other device which is substantially similar to these devices;
- (b) Any type of weapon by whatever name known which will or may be readily converted to expel a projectile by the action of an explosive or other propellant, through a barrel which has a bore diameter of more than one-half inch in diameter. The term shall not include a pistol, rifle, or shotgun suitable for sporting or personal safety purposes or ammunition; a device which, although originally designed for use as a weapon, is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; or surplus military ordnance sold, loaned, or given by authority of the appropriate official of the United States Department of Defense;
- (c) A weapon of mass destruction;
- (d) A bacteriological weapon or biological weapon; **[OR]**
- (e) A combination of parts either designed or intended for use in converting any device into a destructive device;

[13A-10-190(3)(a)-(e)].

A *bacteriological weapon or biological weapon* is a device which is designed in a manner to permit the intentional release onto any person, into the population or environment of microbial, or other biological agents or toxins or viral agents whatever their origin or method of production in a manner not otherwise authorized by law or any device the development, production, or stockpiling of which is prohibited pursuant to the "Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction," 26 U.S.T. 583, TIAS 8063. The microbial or biological agents or viral agents shall include, but not be limited to, any of the following: Anthrax or any variation thereof, smallpox or any variation thereof. [13A-10-190(1)]

[Read as appropriate]

An *over-pressure device* is a frangible container filled with an explosive gas or expanding gas which is designed or constructed so as to cause the container to break or fracture in a manner which is capable of causing death, bodily harm, or property damage. [13A-10-190(13)]

The *State Fire Marshal* is the person appointed by the Commissioner of Insurance pursuant to Section 27-2-10 of the Code of Alabama. [13A-10-190(17)]

An *incendiary* is a flammable or combustible liquid or compound with a flash point of 100 degrees Fahrenheit or less as determined by Tagliabue or equivalent closed-cup device including, but not limited to, gasoline, kerosene, fuel oil, or a derivative of these substances. [13A-10-190(11)]

Weapons of Mass Destruction include any of the following:

[Read as appropriate]

- a. Any destructive device;
- b. Any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
- c. Any weapon involving a disease organism;
- d. Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life; **[OR]**
- e. Any device, weapon, or vehicle designed to cause mass casualties.

[13A-10-190(18)]

Property is real or personal property of any kind including money, choses in action, and other similar interests in property. [13A-10-190(15)]

[Read as appropriate] The manufacture, possession, or transfer of a destructive device legally obtained in accordance with the provisions of the National Firearms Act is not prohibited. [13A-10-190(3)(f)]

[Read as appropriate]

This law shall not apply to any of the following:

[Read as appropriate]

- (1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator pursuant to the laws of the United States, as amended, or when the person is acting in accordance with the laws and any regulations issued pursuant thereto;
- (2) A person licensed as a blaster by the State Fire Marshal, when the blaster is acting in accordance with the laws of the state and any regulations promulgated thereunder and any ordinances and regulations of the political subdivision or authority of the state where blasting operations are being performed;
- (3) Fireworks and any person authorized by the laws of this state and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or

use fireworks when acting in accordance with the laws and any regulations promulgated thereunder;

- (4) A law enforcement, fire service, or emergency management agency of this state, any agency or authority of a political subdivision of this state, or the United States and any employee or authorized agent thereof while in the performance of official duties and any law enforcement officer, fire official, or emergency management official of the United States or any other state while attending training in this state;
- (5) The Armed Forces of the United States or of this state;
- (6) Research or educational programs conducted by or on behalf of a college, university, or secondary school which have been authorized by the chief executive officer of the educational institution or his or her designee and which are conducted in accordance with the laws of the United States and of this state;
- (7) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary;
- (8) Small arms ammunition and reloading components thereof;
- (9) Commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers which is or are intended to be used solely for sporting, recreational, or cultural purposes in black powder firearms or antique firearms or antique devices; **[OR]**
- (10) An explosive which is lawfully possessed in accordance with the rules adopted by the Alabama State Law Enforcement Agency, after consultation with the State Fire Marshal or the Commissioner of Agriculture and Industries or his or her designee, providing for any explosive or quantity of explosive to be used in legitimate agricultural activities. [13A-10-206]

[13A-10-205]

[Read as appropriate] This law shall not apply to any of the following:

[Read as appropriate]

- (1) Fertilizers, propellant activated devices, or propellant activated industrial tools manufactured, imported, distributed, or used for their lawfully intended purposes; **(OR)**
- (2) A pesticide which is manufactured, stored, transported, distributed, possessed, or used in accordance with Chapter 7 of Title 2, the Federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163, as amended, and the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, as amended. [13A-10-209]

[Exclusions for lawfully intended purposes] – It is not unlawful for a person to manufacture, import, distribute, or use fertilizers, propellant activated devices, or propellant activated industrial tools for their lawfully intended purpose. [13A-10-209].

It is not unlawful for a person to manufacture, store, transport, distribute, possess or use a pesticide in accordance with Chapter 7 of Title 2, the Federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163, as amended, and the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, as amended. [13A-10-209]

The definition of a *destructive device* does not prohibit the manufacture, possession, or transfer of a destructive device legally obtained in accordance with the provisions of the National Firearms Act. [13A-10-190(3)(f)]

[Read as appropriate]:

This offense does not apply to a person who has been pardoned of a felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of any other state or of a foreign nation and, by the terms of the pardon, has expressly been authorized to receive, possess, distribute, or transport a destructive device, explosive, poison gas, or detonator. [13A-101995(e)(1)]

This offense does not apply to a person who has been convicted of a felony, but has been granted relief from the disabilities imposed by the laws of the United States with respect to the acquisition, receipt, transfer, shipment, or possession of explosives by the Secretary of the United States Department of the Treasury pursuant to 18 U.S.C. §845, who may apply to the Alabama State Law Enforcement Agency for relief from the disabilities imposed by this section. [13A-101995(e)(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of possession, manufacture, transport, or distribution of a detonator, explosive, poison gas, or hoax device while under indictment or having been convicted of a felony, then you shall find the defendant guilty of possession, manufacture, transport, or distribution of a detonator, explosive, poison gas, or hoax device while under indictment or having been convicted of a felony.

If you find that the State has failed to prove any one or more of the elements of the offense of possession, manufacture, transport, or distribution of a detonator, explosive, poison gas, or hoax device while under indictment or having been convicted of a felony, then you cannot find the defendant guilty of possession, manufacture, transport, or distribution of a detonator, explosive, poison gas, or hoax device while under indictment or having been convicted of a felony.

Use Notes

The statute does not state a specific mens rea element.

Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

- (1) 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)]
- (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)]
- (3) A person acts recklessly with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
- (4) A person acts with criminal negligence with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)].

[Approved 05/09/19]