

Ala. Code 1975, § 13A-11-33

Installing Eavesdropping Device

The defendant is charged with installing an eavesdropping device.

A person commits the crime of installing an eavesdropping device if he/she intentionally installs or places a device in a private place with knowledge it is to be used for eavesdropping and without permission of the owner and any lessee or tenant or guest for hire of the private place.

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

- (1) The defendant installed or placed a device, [**describe device**], in a private place, [**describe**];
- (2) The defendant did so with knowledge it was to be used for eavesdropping;
- (3) The defendant did so without permission of the owner, and any lessee or tenant or guest for hire of the private place; (**AND**)
- (4) The defendant did so intentionally.

A *private place* is a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but such term does not include a place to which the public or a substantial group of the public has access. [13A-11-30(2)]

Eavesdrop is to overhear, record, amplify or transmit any part of the private communication of others without the consent of at least one of the persons engaged in the communication, except as otherwise provided by law. [13A-11-30(1)]

Installing an eavesdropping device in a private place is prima facie evidence of knowledge that the device is to be used for eavesdropping. [13A-11-33(b)]

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 installing an eavesdropping device, then you shall find the defendant guilty of installing an eavesdropping device.

If you find that the State has failed to prove any one or more of the elements of installing an eavesdropping device, then you cannot find the defendant guilty of installing an eavesdropping device.

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

Use Notes

A person does not commit a crime under this article if:

- (1) He/She was a peace officer engaged in the lawful performance of his/her duties;
- (2) He/She was an officer, employee or agent of a communication common carrier who, while acting in the normal course of his/her employment, and while engaged in any activity which was a necessary incident to the rendition of his/her service or to the protection of the rights or property of the carrier of such communication, intercepted, disclosed or used a communication transmitted through the facilities of that carrier; **(OR)**
- (3) He/She relies in good faith on a lawful court order or legislative authorization. [13A-11-36(a)]

The burden of injecting the issue is on the defendant, but this does not shift the burden of proof. [13A-11-36(b)]

[Approved 06-17-16.]