

**Ala. Code 1975, §13A-6-240**

**Distributing Private Image**

The defendant is charged with distributing a private image.

A person commits the crime of distributing a private image if he/she knowingly posts, emails, texts, transmits, or otherwise distributes a private image with the intent to harass, threaten, coerce, or intimidate the person depicted when the depicted person has not consented to the transmission and the depicted person has a reasonable expectation of privacy against transmission of the private image.

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

- (1) The defendant posted, emailed, texted, transmitted, or otherwise distributed a private image of **[insert name of person depicted]**;
- (2) The defendant did so with the intent to harass, threaten, coerce, or intimidate the person depicted;
- (3) The depicted person had not consented to the transmission of the private image;
- (4) The depicted person had a reasonable expectation of privacy against transmission of the private image; **(AND)**
- (5) The defendant did so knowingly.

*Private image* means a photograph, digital image, video, film, or other recording of a person who is identifiable from the recording itself or from the circumstances of its transmission and who is engaged in any act of sadomasochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct. The term includes a recording that has been edited, altered, or otherwise manipulated from its original form. [13A-6-240(b)]

**[Read as appropriate]:** *Sadomasochistic abuse* is:

**[Read as appropriate]:**

- a. Flagellation or torture, for the purpose of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume;
- (OR)**

b. The condition of a person who is nude or clad in undergarments or in a revealing or bizarre costume being fettered, bound or otherwise physically restrained for the purpose of sexual stimulation. [13A-12-190(5)]

**[Read as appropriate]:** *Sexual intercourse* is intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal. [13A-12-190(7)]

**[Read as appropriate]:** *Sexual excitement* is the condition of human male or female genitals when in a state of sexual stimulation. [13A-12-190(6)]

**[Read as appropriate]:** *Masturbation* is the manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation. [13A-12-190(8)]

**[Read as appropriate]:** *Breast nudity* is the lewd showing of the post-pubertal human female breasts below a point immediately above the top of the areola. [13A-12-190(10)]

**[Read as appropriate]:** *Genital nudity* is the lewd showing of the genitals or pubic area.. [13A-12-190(11)]

**[Read as appropriate]:** *Other sexual conduct* is any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification [13A-12-190(9)]

*A reasonable expectation of privacy* includes, but is not limited to either:

- (a) The person depicted in the private image created it or consented to its creation believing that it would remain confidential; **(OR)**
- (b) The sexual conduct depicted in the image was involuntary.  
[13A-6-240(c)(1)]

**[Read as appropriate]:** There is no reasonable expectation of privacy against the transmission of a private image made voluntarily in a public or commercial setting. [13A-6-240(c)(2)]

**[Read as appropriate]:** It is a defense to distributing a private image if the distribution of the private image was made in the public interest, including, but not limited to, the reporting of unlawful conduct; the lawful and common practices of law enforcement, legal proceedings, or medical treatment; or a bona fide attempt to prevent further distribution of the private image. [13A-6-240(d)]

A person acts *intentionally* with respect to a result or to conduct when it is his/her purpose to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *knowingly* with respect to conduct or to a circumstance when 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 above elements of distributing a private image, then you shall find the defendant guilty of distributing a private image.

If you find that the State has failed to prove any one or more of the elements of the offense of distributing a private image, then you cannot find the defendant guilty of distributing a private image.

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

### **Use Notes**

“Breast nudity” is specifically defined in this section by reference to 13A-12-190; however, the terms, “sodomasochistic abuse,” “sexual intercourse,” “sexual excitement,” “masturbation,” “genital nudity,” or “other sexual conduct” are not defined by reference or otherwise. However, like “breast nudity,” definitions for these terms are also listed in 13A-12-190. Note that some of the terms are defined differently in 13A-6-60. While the definitions in 13A-12-190 do not expressly apply to this code section, their definitions would arguably be appropriate for use here. Similarly, “harass,” “threaten” and other terms are used throughout the criminal code but are not statutorily defined under this code section.

Proof of a prior adjudication or conviction is an element necessary to the charging instrument to charge the felony version of this offense. If the court submits this “element” to the jury, it will become necessary to decide in what manner and at what point this element is charged to the jury.

[Approved 05/09/19]