

Ala. Code 1975, § 13A-6-27

Criminal Use of a Defense Spray

The defendant is charged with criminal use of a defense spray.

A person commits the crime of criminal use of a defense spray if he/she uses a defense spray against another person in the commission of a crime or against a law enforcement officer while the law enforcement officer is performing his/her official duties.

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

- (1) The defendant used a defense spray, **[describe]**, against: **[Read all appropriate]**:
 - (a) Another person, **[name]**, in the commission of a crime, **[name]**; **(OR)**
 - (b) A law enforcement officer, **[name]**, while the law enforcement officer was performing his/her official duties; **(AND)**
- (2) The defendant acted **[insert appropriate mens rea element - See Use Notes]**.

A *defense spray* includes, but is not limited to, pepper spray, foam and any other self-defense chemical spray. [13A-6-27(a)]

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

If you find that the State has failed to prove any one or more of the elements of use of a defense spray, then you cannot find the defendant guilty of use of a defense spray.

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)]

For unborn child exceptions see 13A-6-1(b) through (e).

[Approved 10-14-15.]