

Ala. Code 1975, § 13A-10-193.2

Unlawful Manufacture of Destructive Device or Bacteriological or Biological Weapon in the First Degree

(Manufactures destructive device or bacteriological or biological weapon)

The defendant is charged with unlawful manufacture of a destructive device or bacteriological or biological weapon in the first degree.

A person commits the crime of unlawful manufacture of a destructive device or bacteriological or biological weapon in the first degree if he/she manufactures a destructive device or bacteriological or biological weapon and two or more of the following conditions occur in conjunction with that act: **[Read as appropriate]:**

- a. Use of a booby trap or manufacture of a booby trap;
- b. Illegal possession, transportation, or disposal of hazardous or dangerous materials or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;
- c. A clandestine laboratory operation was to take place, or did take place, within 500 feet of a residence, place of business, church, or school;
- d. A clandestine laboratory operation actually produced any amount of a specified destructive device or bacteriological or biological weapon; (AND/OR)
- e. A person under the age of 17 was present during the manufacturing process.

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

(1) The Defendant manufactured a: **[Read as appropriate]:**

- (a) Destructive device;
- (b) Bacteriological weapon; **[OR]**
- (c) Biological weapon;

[insert description of item];

(2) Two or more of the following conditions occur in conjunction with that act: **[Read as appropriate]:**

- a. Use of a booby trap or manufacture of a booby trap;
- b. Illegal possession, transportation, or disposal of hazardous or dangerous materials or while transporting or causing to be transported materials in

furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;

- c. A clandestine laboratory operation was to take place, or did take place, within 500 feet of a residence, place of business, church, or school;
- d. A clandestine laboratory operation actually produced any amount of a specified destructive device or bacteriological or biological weapon;

[AND/OR]

- e. A person under the age of 17 was present during the manufacturing process.

(3) The Defendant acted **[insert appropriate mens rea element - See Use Notes]**.

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)]

[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)]

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]

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)]

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)]

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]

[Read as appropriate]: It is a defense if the defendant is authorized by state or federal law or a permit issued to him/her by the State Fire Marshal. [13A-10-193.1(a)]

[Read as appropriate]: The fact that a destructive device, over-pressure device, explosive, detonator, poison gas, or bacteriological or biological weapon does not function as designed or intended, is not a defense to the crime of unlawful manufacture of a destructive device or bacteriological or biological weapon in the second degree. [13A-10-193.1(b)]

[Read as appropriate]:

A *booby trap* is any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. This term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices for the production of toxic fumes or gases. [13A-1-2(1)]

A *clandestine laboratory operation* is any of the following:

- a. Purchase or procurement of chemicals, supplies, equipment, or laboratory location for the unlawful manufacture of controlled substances;
- b. Transportation or arranging for the transportation of chemicals, supplies, or equipment for the unlawful manufacture of controlled substances;

- c. Setting up of equipment or supplies in preparation for the unlawful manufacture of controlled substances; (OR)
- d. Distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the unlawful manufacture of controlled substances.

[13A-1-2(3)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of unlawful manufacture of a destructive device or bacteriological or biological weapon in the first degree, then you shall find the defendant guilty of unlawful manufacture of a destructive device or bacteriological or biological weapon in the first degree.

If you find that the State has failed to prove any one or more of the elements of the offense of unlawful manufacture of a destructive device or bacteriological or biological weapon in the first degree, then you cannot find the defendant guilty of unlawful manufacture of a destructive device or bacteriological or biological weapon in the first degree.

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

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]