

Ala. Code 1975, § 13A-11-2
Treason

The defendant is charged with treason.

A person commits the crime of treason if he/she levies war against the State of Alabama or adheres to its enemies, giving them aid and comfort.

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

(1) The defendant **[Read as appropriate]**:

(A) Levied war against the State of Alabama by **[describe the act]**;

(OR) (B) Adhered to its enemies, giving them aid and comfort,
[describe the act];

(AND)

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

[Read as appropriate]: No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or upon confession in open court.
[13A-11-2(b)]

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

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of treason, then you cannot find the defendant guilty of treason.

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

Use Notes

“To constitute an actual levy of war, there must be an assembly of persons, met for a treasonable purpose, and some overt act done, or some attempt made by them with force to execute, or toward executing, that purpose.” Justice Story’s instruction to a federal grand jury in *Story*, Circuit Justice, Charge to Grand Jury, 1 Story 614, 30 F. Cas. 1046, 1047 (Circuit Court, R.I., 1842).

For discussion of the two-witness rule under federal provision (which is very similar to the Alabama law), see *Cramer v. U.S.*, 325 U.S. 1, 29-35 (1945); *Kawakita v. U.S.*, 343 U.S. 717, 736 (1952); *Chandler v. U.S.*, 171 F.2d 921, 940 (1st Cir. 1948).

With regard to mens rea, some federal cases support the conclusion that to “adhere to the enemy” and to “give aid and comfort” requires an intent to betray. E.g., *Chandler v. U.S.*, 171 F.2d 921, 938, 942-43 (1st Cir. 1948) (“The significant thing is not so much the character of the act which in fact gives aid and comfort to the enemy, but whether the act is done with an intent to betray.”; “Finally, we come to appellant’s argument relating to the ‘intent to betray’. This phrase does not appear in the constitutional or statutory definition of the crime, but is deduced from the concept of adherence to the enemy.

Adherence to the enemy and an overt act giving aid and comfort to the enemy must both be present to make a treason under our law.

Harboring disloyal sentiments is not enough. The mere expression of disloyal sentiments is not enough. There must be an overt act giving aid and comfort. Of course one may give aid and comfort to the enemy without an intent to betray, as where a citizen innocently assists an enemy agent not knowing or suspecting him to be such.”).

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 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.

[Approved 09-13-19.]