

Ala. Code 1975, § 13A-11-32.1

Aggravated Criminal Surveillance

The defendant is charged with aggravated criminal surveillance.

A person commits the crime of aggravated criminal surveillance if he/she intentionally engages in surveillance of an individual in any place where the individual being observed has a reasonable expectation of privacy, without the prior express or implied consent of the individual being observed, for the purpose of sexual gratification.

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

- (1) The defendant engaged in surveillance of an individual, [**name**];
- (2) The defendant did so in a place where the individual being observed had a reasonable expectation of privacy, [**describe place**];
- (3) The defendant did so without the prior express or implied consent of the individual being observed;
- (4) The defendant did so for the purpose of sexual gratification; **(AND)**
- (5) The defendant did so intentionally.

Surveillance is the secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person observed. [13A-11-30(3)]

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)]

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 aggravated criminal surveillance, then you shall find the defendant guilty of aggravated criminal surveillance.

If you find that the State has failed to prove any one or more of the elements of aggravated criminal surveillance, then you cannot find the defendant guilty of aggravated criminal surveillance.

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

Use Note

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.]