

**Ala. Code 1975, § 13A-11-34**

**Criminal Possession of Eavesdropping Device**

The defendant is charged with criminal possession of an eavesdropping device.

A person commits the crime of criminal possession of an eavesdropping device if he/she possesses, manufactures, sends or transports any device designed or commonly used for eavesdropping, **(AND) [Read as appropriate]:**

- (1) Intends to use that device to eavesdrop; **(OR)**
- (2) Knows that another person intends to use that device to eavesdrop.

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

- (1) The defendant possessed, manufactured, sent or transported a device designed or commonly used for eavesdropping, **[describe device]; (AND)**
- (2) The defendant **[Read as appropriate]:**
  - (A) Intended to use that device to eavesdrop; **(OR)**
  - (B) Knew that another person intended to use that device to eavesdrop.

*Eavesdrop* is to overhear, record, amplify or transmit any part of the private communication of others without the consent of at least one of the persons engaged in the communication, except as otherwise provided by law. [13A-11-30(1)]

**[Read as appropriate]:** 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)] **(OR)**

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 criminal possession of an eavesdropping device, then you shall find the defendant guilty of criminal possession of an eavesdropping device.

If you find that the State has failed to prove any one or more of the elements of criminal possession of an eavesdropping device, then you cannot find the defendant guilty of criminal possession of an eavesdropping device.

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

**Use Notes**

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.]