

**Ala. Code 1975, § 13A-11-78**  
**Selling Pistol Without License**

The defendant is charged with selling a pistol without a license.

A person commits the crime of selling a pistol without a license if he/she is a retail dealer and sells or otherwise transfers, or exposes for sale or transfer, or have in his/her possession with intent to sell, or otherwise transfer, any pistol without being licensed.

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

- (1) The defendant was a retail dealer;
- (2) The defendant **[Read as appropriate]:**
  - (A) Sold or otherwise transferred a pistol;
  - (B) Exposed for sale or transfer a pistol; **(OR)**
  - (C) Had in his/her possession with intent to sell, or otherwise transfer, a pistol;
- (3) The defendant was not licensed to do so **[Read as appropriate]: [insert appropriate language from 13A-11-79 governing licensing]; (AND)**
- (4) The defendant acted **[INSERT APPROPRIATE MENS REA ELEMENT - SEE USE NOTE].**

A *pistol* is a firearm with a barrel less than 12 inches in length. [13A-11-70(1)]

A *firearm* is a weapon from which a shot is discharged by gunpowder. [13A-11-62(1); 13A-8-1(5)]

To *possess* means to have physical possession or otherwise to exercise dominion or control over tangible property. [13A-1-2(13)]

**[Read as appropriate]:** A person cannot be found guilty of this offense if he/she purchased, possessed or sold pistols as curiosities or ornaments or transported such pistols unloaded and in a bag, box or securely wrapped package, not concealed on the person. [13A-11-83]

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 selling a pistol without a license, then you shall find the defendant guilty of selling a pistol without a license.

If you find that the State has failed to prove any one or more of the elements of selling a pistol without a license, then you cannot find the defendant guilty of selling a pistol without a license.

### **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 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]