

Ala. Code 1975, §13A-12-191(b)*
Advertising Child Sexually Explicit Conduct Material
[*These instructions apply only to offenses committed on or after
10/1/2024]

The defendant is charged with the advertising, promoting, presenting, distributing, or soliciting child sexually explicit conduct material.

A person commits the crime of advertising, promoting, presenting, distributing, or soliciting child sexually explicit conduct material if he/she knowingly advertises, promotes, presents, distributes, or solicits by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is a visual depiction of an actual individual under 18 years of age engaging in sexually explicit conduct.

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

(1) The defendant advertised, promoted, presented, distributed, or solicited by any means, including by computer, any material or purported material in a manner that reflected the belief, or that was intended to cause another to believe, that the material or purported material was a visual depiction of an actual individual under 18 years of age engaging in sexually explicit conduct;

(AND)

(2) The defendant did so knowingly.

[Read as appropriate]: You may infer from the following factors whether or not the individual displayed or depicted in any visual depiction is under 18 years of age:

- (1) The general body growth and bone structure of the individual;
- (2) The development of pubic hair or body hair on the individual;
- (3) The development of the individual's sexual organs;
- (4) The context in which the individual is placed by any accompanying printed or text material;
- (5) Any expert testimony as to the degree of maturity of the individual.

[13A-12-193(b)]

The existence of any or all of the factors listed shall not operate to change the requirement that before any conviction may be had, the state must convince you beyond a reasonable doubt that the individual engaged in the sexually explicit

conduct is or is virtually indistinguishable from an individual under 18 years of age. [13A-12-193(c)]

[Read as appropriate]: It is an affirmative defense to prosecution under this division if the actual individual purported to be under 18 years of age and engaged in sexually explicit conduct was an actual individual 18 years of age or older at the time of the offense. [13A-12-193(d)]

[Read as appropriate]: The state shall not be required to establish the actual existence or identity of the individual alleged to be under 18 years of age who is engaged in any act of sexually explicit conduct. [13A-12-194]

Sexually explicit conduct is actual or simulated conduct that includes sadomasochistic abuse, sexual excitement, sexual intercourse, masturbation, breast nudity, genital nudity, or other sexual conduct. [13A-12-190(14)]

Sadomasochistic abuse is either of the following:

a. Flagellation or torture, for the purpose of sexual stimulation, by or upon an individual who is nude or clad in undergarments or in a revealing or bizarre costume;

(OR)

b. The condition of an individual who is nude or clad in undergarments or in a revealing or bizarre costume being fettered, bound, or otherwise physically restrained for the purpose of sexual stimulation.
[13A-12-190(10)]

Sexual excitement is the condition of human male or female genitals when in a state of sexual stimulation. [13A-12-190(12)]

Sexual intercourse is intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between individuals of the same or opposite sex or between a human and an animal. [13A-12-190(13)]

Masturbation is manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation. [13A-12-190(7)]

Breast nudity is the lewd showing of the post-pubertal human female breasts below a point immediately above the top of the areola. [13A-12-190(1)]

Genital nudity is the lewd showing of the genitals or pubic area.

[13A-12-190(5)]

Other sexual conduct is any touching of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification. [13A-12-190(8)]

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)]

A person *knowingly* acts when the person knows the nature of the child sexual abuse material. A person knows the nature of the material when either of the following circumstances exist:

- a. The person is aware of the character and content of the material.

(OR)

- b. The person recklessly disregards circumstances suggesting the character and content of the material.

[13A-12-190(6)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of advertising, promoting, presenting, distributing, or soliciting child sexually explicit conduct material, then you shall find the defendant guilty of advertising, promoting, presenting, distributing, or soliciting child sexually explicit conduct material.

If you find from the evidence that the State has failed to prove any one or more of the elements of advertising, promoting, presenting, distributing, or soliciting child sexually explicit conduct material, then you cannot find the defendant guilty of advertising, promoting, presenting, distributing, or soliciting child sexually explicit conduct material.

Use Notes

In proving that an individual in a visual depiction who is engaged in any sexually explicit conduct is under 18 years of age, the state is not required to introduce into evidence a birth certificate, produce testimony as to the date of birth of the individual, or produce testimony of any person who knows or is acquainted with the individual alleged to be under 18 years of age. If the defendant or the state intends to rely on a birth certificate to prove the date of birth of any individual, the defendant or the state shall file with the clerk of the court in which the action is pending, at least 15 days prior to trial, a notice of an

intention to rely on an official, certified copy of a birth certificate together with a copy of the birth certificate.

[13A-12-193(a)]

The depiction of an individual less than 18 years of age that violates this division shall constitute a separate offense for each single visual depiction.

[13A-12-190(11)]

[Approved 01-31-25]